
Briefing Book

**S.1883
Kennedy Bill**

February 20, 1990

2/16/90

TIMN 298824

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**CONFIDENTIAL:
MINNESOTA TOBACCO LITIGATION**

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TIMN 298826

101ST CONGRESS
1ST SESSION

S. 1883

To amend the Public Health Service Act to establish a center for tobacco products, to inform the public concerning the hazards of tobacco use, to disclose and restrict additives to such products, and to require labeling of such products to provide information concerning such products to the public, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 15 (legislative day, NOVEMBER 6), 1989

Mr. KENNEDY introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To amend the Public Health Service Act to establish a center for tobacco products, to inform the public concerning the hazards of tobacco use, to disclose and restrict additives to such products, and to require labeling of such products to provide information concerning such products to the public, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Tobacco Product Educa-
5 tion and Health Protection Act of 1990".

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1 SEC. 2. FINDINGS AND PURPOSES.

2 (a) FINDINGS.—Congress finds that—

3 (1) despite a steady decline in tobacco consump-
4 tion, 52,000,000 Americans still use tobacco products
5 annually;6 (2) tobacco use causes nearly 400,000 deaths
7 each year in the United States, the equivalent of over
8 1,000 deaths a day;9 (3) tobacco use is the most important cause of
10 death and illness in the United States today, causing
11 one sixth of all deaths annually;12 (4) in 1985, the private and public sectors in the
13 United States spent approximately \$22,000,000,000
14 on smoking-related illnesses and absorbed
15 \$43,000,000,000 in economic losses from such
16 illnesses;17 (5) 50 percent of all smokers begin using tobacco
18 by the age of 14, and 90 percent of all smokers begin
19 using tobacco before the age of 20;20 (6) nicotine-containing tobacco products are
21 addictive;22 (7) most young people initiate tobacco use and
23 become addicted before they are sufficiently informed
24 or mature enough to make an informed choice concern-
25 ing such use;

1 (8) the tobacco industry contributes significantly
2 to the experimentation with tobacco and the initiation
3 of regular tobacco use by children and young adults
4 through its' advertising and promotion practices;

5 (9) in 1986 the tobacco industry spent
6 \$2,400,000,000 on the advertising and promotion of
7 tobacco products, ranking such products among the
8 most heavily advertised and promoted products in the
9 United States;

10 (10) the tobacco industry claims that the purpose
11 of advertising is to influence consumer brand selection,
12 but only 10 percent of tobacco users switch brands
13 each year;

14 (11) convincing evidence demonstrates that adver-
15 tising is predominantly directed at market expansion;

16 (12) the tobacco industry must attract 6,000 new
17 smokers daily to replace those who stop smoking or die
18 of smoking-related diseases and other causes, or quit;

19 (13) tobacco product advertising and promotion
20 are intended to capture the youth market and seek to
21 do so through advertisements that suggest a strong as-
22 sociation between smoking and physical fitness, attrac-
23 tiveness, success, adventure, and independence and are
24 designed to have the greatest impact on minors, who
25 are more vulnerable to image-based advertising;

1 (14) serious gaps in knowledge about the harmful
2 effects of tobacco products use persist in both minors
3 and the adult population, with surveys showing that
4 large numbers of citizens are unaware that smoking
5 causes lung cancer, heart disease and still births in
6 pregnancy;

7 (15) education is effective in preventing and halt-
8 ing the use of tobacco products;

9 (16) the proportion of smokers among the most
10 educated adults is less than half that among the least
11 educated adults, blue-collar workers, high school drop-
12 outs and minorities;

13 (17) among those individuals with the least
14 amount of education who have the highest prevalence
15 of smoking are young citizens, blue-collar workers,
16 high school drop-outs and minorities;

17 (18) the total resources of the major voluntary or-
18 ganizations that sponsor educational activities on smok-
19 ing have never exceeded 2 percent of tobacco industry
20 expenditures for the promotion of tobacco;

21 (19) children and teenagers should be informed
22 about the dangers of smoking and be discouraged from
23 initiating the use of tobacco products;

1 (20) the American public and groups with the
2 highest prevalence of tobacco use should be informed
3 about the dangers of tobacco products;

4 (21) although most States prohibit sales of tobacco
5 products to minors, these laws are not enforced;

6 (22) in recent years, there have been efforts in
7 some States to improve the enforcement of existing
8 laws which prohibit the sale of tobacco products to
9 minors;

10 (23) a program of Federal assistance will encour-
11 age and enable States to provide more effective en-
12 forcement of their existing laws particularly on the sale
13 of tobacco products to minors; and

14 (24) as part of such lack of regulation, no Federal
15 agency requires public disclosure or restricts the use of
16 numerous additives in tobacco products.

17 (b) PURPOSES.—It is the purpose of this Act to—

18 (1) help educate young citizens to prevent initi-
19 ation and encourage cessation of tobacco use;

20 (2) inform the public about the harmful effects of
21 tobacco products;

22 (3) support State efforts to improve educational
23 programs for the prevention and cessation of tobacco
24 use;

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1 (4) strengthen laws limiting the sale of tobacco
2 products to minors;

3 (5) establish Federal regulatory authority over to-
4 bacco products and additives in such products;

5 (6) ensure the disclosure of accurate information
6 to the public; and

7 (7) analyze additives and determine the risk of
8 such additives to individual health.

9 **SEC. 3. CENTER FOR TOBACCO PRODUCTS.**

10 The Public Health Service Act is amended by inserting
11 after title VIII (42 U.S.C. 296k et seq.) the following new
12 title:

13 **"TITLE IX—CENTER FOR**
14 **TOBACCO PRODUCTS**

15 **"SUBTITLE A—CENTER FOR TOBACCO PRODUCTS**

16 **"SEC. 901. ESTABLISHMENT OF CENTER.**

17 **"(a) IN GENERAL.**—In assuming the responsibility of
18 the Secretary to the American public to promote and protect
19 the health of the public, the Secretary shall establish within
20 the Public Health Service, at the Centers For Disease Con-
21 trol, a Center for Tobacco Products.

22 **"(b) PURPOSE.**—It shall be the purpose of the Center
23 to—

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1 “(1) educate the public concerning the health con-
2 sequences of using tobacco products and provide out-
3 reach services to youth;

4 “(2) support research efforts concerning patterns
5 of tobacco use and cessation;

6 “(3) inform the public regarding constituents of,
7 and additives to, tobacco products;

8 “(4) restrict the use of additives that represent a
9 significant health risk to the public;

10 “(5) provide assistance to States to enhance their
11 efforts to enforce existing State laws concerning the
12 sale of tobacco products within the State to minors;
13 and

14 “(6) coordinate the education and research activi-
15 ties of the Federal government with regard to tobacco
16 products.

17 “SEC. 902. FUNCTIONS OF CENTER.

18 “(a) IN GENERAL.—The Center shall perform functions
19 that shall include—

20 “(1) determining the existence of all additives
21 contained in tobacco products to ascertain the number,
22 type, and amount of all such additives to disclose such
23 to the public and to determine whether such additives
24 represent a significant added health risk to consumers
25 of such products;

1 “(2) presenting information to the public through
2 labels or package inserts concerning—

3 “(A) the harmful tobacco smoke constituents;
4 and

5 “(B) the additives contained in tobacco
6 products;

7 “(3) conducting reviews of the effectiveness of in-
8 formation required to be contained in rotating warning
9 labels and the undertaking of research directed towards
10 improving the effectiveness of such labels;

11 “(4) the establishment of a program to award in-
12 centive grants to States to promote better enforcement
13 of State laws concerning the sale of tobacco products
14 to minors; and

15 “(5) the establishment of a program to assist 10
16 selected model States that request assistance and
17 desire to improve their enforcement of State laws con-
18 cerning the sale of tobacco products within the State to
19 minors.

20 “(b) OFFICE OF REGULATORY AFFAIRS.—In carrying
21 out paragraphs (3), (4) and (5) of section 901(b) and sections
22 941 through 946, the Center shall establish an Office of Reg-
23 ulatory Affairs that shall administer the enforcement authori-
24 ties and provisions of this title and coordinate its work with
25 other offices and agencies of the Federal government.

1 “(c) **CONTRACTS.**—The Center may enter into con-
2 tracts with agencies within and outside of the Public Health
3 Service in the exercise of its functions.

4 “(d) **AUTHORITY OF APPROPRIATIONS.**—There are au-
5 thorized to be appropriated to carry out this section,
6 \$50,000,000 for fiscal year 1991, and such sums as may be
7 necessary in each of the fiscal years 1992 and 1993.

8 **“SEC. 903. EDUCATIONAL AND RESEARCH ACTIVITIES.**

9 “(a) **IN GENERAL.**—The Center shall carry out educa-
10 tional and research activities that shall include—

11 “(1) the preparation and distribution of materials
12 to educate the public concerning the health effects of
13 using tobacco products;

14 “(2) the preparation of public service announce-
15 ments and the preparation and conduct of paid adver-
16 tising campaigns to inform targeted populations, includ-
17 ing youth and the general population, of the health ef-
18 fects of using tobacco products and the opportunities
19 for prevention and cessation of such use;

20 “(3) coordinating with film makers, broadcast
21 media managers, and others regarding the impact of
22 the media on tobacco use behavior;

23 “(4) research on patterns of tobacco product use,
24 initiation and cessation, and effective methods for dis-
25 seminating such information; and

1 “(5) plans to effectively provide outreach services
2 to high risk groups and youth with such information.

3 “(b) FEDERAL INTERAGENCY COMMITTEE ON SMOK-
4 ING AND HEALTH.—

5 “(1) TRANSFER OF FUNCTIONS.—The functions
6 and duties of the Federal Interagency Committee on
7 Smoking and Health shall be transferred to and be the
8 responsibility of the Center.

9 “(2) COORDINATION.—The Center, acting
10 through the Federal Interagency Committee on Smok-
11 ing and Health, shall coordinate educational and re-
12 search activities with other Federal agencies and seek
13 to minimize duplication of tobacco related activity.”.

14 **SEC. 4. SMOKING EDUCATION AND INFORMATION.**

15 Section 3 of the Comprehensive Smoking Education Act
16 (15 U.S.C. 1341) is amended—

17 (1) in paragraph (5), by striking out “and” after
18 the semicolon;

19 (2) in paragraph (6), by striking out the period
20 and inserting in lieu thereof “; and”; and

21 (3) by adding at the end thereof the following new
22 paragraph:

23 “(7) establish a comprehensive outreach program
24 to inform individuals under the age of 18 about the
25 health consequences of smoking.”.

1 SEC. 5. ANTI-SMOKING PROGRAMS.

2 Title IX of the Public Health Service Act (as added by
3 section (3)) is amended by adding at the end thereof the fol-
4 lowing new subtitle:

5 "SUBTITLE B—ANTI-SMOKING PROGRAMS

6 "CHAPTER 1—PUBLIC INFORMATION CAMPAIGNS

7 "SEC. 911. GRANTS FOR PUBLIC INFORMATION CAMPAIGNS.

8 "(a) IN GENERAL.—The Center shall make grants to,
9 or enter into contracts with entities that meet the require-
10 ments of subsection (b) to conduct public information cam-
11 paigns concerning the use of tobacco products.

12 "(b) ENTITIES.—Entities eligible to receive grants
13 under this section shall—

14 "(1) be public, private or nonprofit private
15 entities; and

16 "(2) provide public information campaigns regard-
17 ing tobacco use and health, through the use of—

18 "(A) public service announcements;

19 "(B) paid advertising messages; and

20 "(C) counter advertising to provide the
21 public with information to counter the messages in
22 tobacco advertisements that promote tobacco use;
23 that are designed for television, radio and print media,
24 billboards, and public transit advertising that shall
25 warn youth and other individuals, specifically those in

1 the groups of highest tobacco use, concerning the
2 health and safety risks of tobacco use.

3 "SEC. 912. GRANT APPLICATION.

4 "(a) REQUIREMENT.—No grant or contract shall be
5 made or entered into under this chapter unless an application
6 that meets the requirements of subsection (b) has been sub-
7 mitted to, and approved by, the Center.

8 "(b) CONTENTS.—An application submitted under sub-
9 section (a) shall provide such agreements, assurances, and
10 information, be in such form and submitted in such manner as
11 the Center shall prescribe, and shall contain—

12 "(1) a complete description of the plan of the ap-
13 plicant for the development of a public information
14 campaign that shall include advertising, and—

15 "(A) shall focus on specific tobacco uses
16 (such as persuasional programs to deter nonto-
17 bacco users, especially youth, from using tobacco
18 products and the cessation of the use of tobacco
19 products by tobacco users, as well as the type of
20 tobacco use);

21 "(B) an identification of the specific audi-
22 ences that shall be targeted which shall include
23 those communities and groups with the highest
24 prevalence of tobacco use and high health risks
25 from tobacco use, specifically, to include youth,

1 school dropouts, minorities, blue collar workers,
2 pregnant women, and low and no income
3 individuals;

4 "(C) an identification of the media to be used
5 in the campaign;

6 "(D) an identification of the geographic dis-
7 tribution of the campaign;

8 "(E) an identification of the type and scope
9 of the intended activities of the campaign;

10 "(F) plans to test market the development
11 plan with a relevant population group and geo-
12 graphic area and an assurance that effectiveness
13 criteria will be implemented prior to the comple-
14 tion of the final plan;

15 "(G) an evaluation component to measure
16 the effectiveness of the campaign; and

17 "(H) such other information as the Center
18 may require; and

19 "(2) a complete description of the kind, amount,
20 distribution, and timing of advertising and such other
21 information as the Center may require, and an assur-
22 ance that the media organizations with which such ad-
23 vertisements are placed will not lower the current fre-
24 quency of public service announcements.

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1 "SEC. 913. GRANT ACTIVITIES AND CRITERIA.

2 “(a) ACTIVITIES.—Grants made under this chapter
3 shall be used for the development of a public information
4 campaign that may include public service announcements,
5 paid advertisements for television, radio, and print media as
6 well as billboards, public transit advertising, and any other
7 mode of advertising that the Center determines to be appro-
8 priate to meet the requirements of section 912, and such
9 activities shall—

10 “(1) focus on seeking to discourage the initiation
11 of use of tobacco products by youth and nonusers; and

12 “(2) encourage cessation of tobacco use by those
13 who currently use tobacco products;

14 with a focus on the specific groups identified in subsection (b).

15 “(b) CRITERIA.—The Center shall include in the crite-
16 ria used for awarding grants under this chapter evidence that
17 the applicant—

18 “(1) will conduct activities that target communi-
19 ties and groups with the highest prevalence of tobacco
20 use and the highest health risk from tobacco use, spe-
21 cifically youth, school dropouts, pregnant women, mi-
22 norities, blue collar workers, and low and no income
23 people.

24 “(2) has a record of high quality campaigns of a
25 comparable type; and

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1 “(3) has a record of high quality campaigns that
2 target the population groups specified in paragraph (1).

3 “(c) PREFERENCE.—In awarding grants or contracts
4 under this chapter, the Center shall give a preference to
5 those applicants that will conduct activities that will most
6 likely encompass an audience that includes a high concentra-
7 tion of the groups identified in subsection (b)(1).

8 “(d) TARGETING.—In awarding grants or contracts
9 under this chapter, the Center shall attempt to award such
10 grants and contracts so that all target groups identified in
11 subsection (b)(1) are reached with diverse media. Single con-
12 tracts or grants shall not require that all groups are targeted
13 or that all media must be used.

14 **“SEC. 914. AUTHORIZATION OF APPROPRIATIONS.**

15 “There are authorized to be appropriated to make
16 grants under this chapter, \$50,000,000 for fiscal year 1991,
17 and such sums as may be necessary in each of the fiscal years
18 1992 and 1993.

19 **“CHAPTER 2—STATE LEADERSHIP IN ANTI-**
20 **TOBACCO USE INTERVENTION**

21 **“SEC. 915. GRANT PROGRAM.**

22 “‘The Center shall award grants to States and, in con-
23 sultation with State health authorities, to political subdivi-
24 sions of States, to assist such States in meeting the costs of
25 improving State leadership concerning activities that—

1 “(1) will prevent the initial use of tobacco prod-
2 ucts by minors; and

3 “(2) encourage the cessation of the use of tobacco
4 products;

5 among the youth and other residents of the State, with par-
6 ticular attention directed towards those individuals in groups
7 who are at the highest risk and suffer the highest prevalence
8 of tobacco use, including school dropouts, minorities, low-
9 income individuals, pregnant women and blue collar workers.

10 “SEC. 916. APPLICATIONS.

11 “(a) REQUIREMENT.—No grant shall be awarded under
12 this chapter unless an application that meets the require-
13 ments of subsection (b) has been submitted to, and approved
14 by, the Center.

15 “(b) CONTENTS.—An application submitted under sub-
16 section (a) shall be in such form, be submitted in such manner
17 as the Center shall prescribe, and shall contain—

18 “(1) a complete description of the type of pro-
19 grams that will be established or assisted by or through
20 the applicant, that shall include—

21 “(A) a statement of the goals and objectives
22 of such programs or activities that are consistent
23 with the purpose of section 915;

24 “(B) a description of the activities that the
25 State shall develop to establish an ongoing anti-

1 tobacco initiative within the State Department of
2 Health that shall involve the coordination, by
3 such Department of Health, of such initiative with
4 existing anti-tobacco use programs;

5 “(C) an assurance that the activities devel-
6 oped pursuant to subparagraph (B) will involve a
7 concentration of effort by the State to change to-
8 bacco use behavior in groups identified in section
9 915, that shall include one or more of the activi-
10 ties described under section 917; and

11 “(D) a timetable for implementation or com-
12 pletion of the proposed activities;

13 “(2) an assurance by the State that it will make
14 an ongoing commitment to support the anti-tobacco ini-
15 tiative described in paragraph (1)(B) subsequent to the
16 termination of the grant period;

17 “(3) an assurance satisfactory to the Center that
18 the programs established or assisted with funds under a
19 grant awarded under this subpart will be established or
20 assisted in a manner consistent with the State health
21 plan in effect under section 1524(c); and

22 “(4) such other information as the Secretary may
23 by regulation prescribe.

1 "SEC. 917. GRANT ACTIVITIES AND CRITERIA.

2 "(a) NUMBER OF GRANTS.—The Center shall award
3 grants to at least 10 but not more than 20 States.

4 "(b) USE OF GRANT.—Grants awarded under this
5 chapter shall be used—

6 "(1) for activities that promote and enforce a min-
7 imum age that is at least 18 years for the purchase of
8 tobacco products;

9 "(2) for activities that will enhance the ability of
10 the State Department of Health to implement compre-
11 hensive planning, and intervention activities for anti-
12 tobacco use;

13 "(3) to assist in the provision of training and tech-
14 nical assistance by appropriate Federal government en-
15 tities to enhance the development of State leadership
16 capabilities in anti-tobacco use;

17 "(4) for education, training, and clinical skills im-
18 provement activities to educate teachers, community
19 workers, and health professionals (including physicians,
20 dentists, and allied health personnel) in anti-tobacco
21 use intervention strategies; and

22 "(5) for the collection of information and data to
23 support State legislative efforts concerning anti-tobacco
24 use.

25 "(c) CRITERIA.—The Center shall include in the crite-
26 ria used for awarding grants under this chapter—

1 “(1) evidence that the applicant has made efforts
2 to discourage smoking and other tobacco use among
3 the youth residing in such applicant's State;

4 “(2) evidence that the applicant has made efforts
5 to enforce the law concerning the minimum age re-
6 quirements for the purchase of tobacco products,

7 “(3) evidence of the need of the applicant for the
8 assistance that is requested by the applicant, as reflect-
9 ed in the prevalence of the use of tobacco within the
10 applicant's State, especially among the populations that
11 are described under section 915;

12 “(4) evidence of the need of the applicant for the
13 assistance that is requested by the applicant, as reflect-
14 ed in the necessity for the development of Statewide
15 expertise in the planning of, and intervention in, anti-
16 tobacco use situations;

17 “(5) the potential for the success of proposed ac-
18 tivities that will be established or assisted under the
19 grant;

20 “(6) evidence of cooperative arrangements that
21 the applicant has, or will enter into with other entities
22 that will participate in the activities established or as-
23 sisted under the grant; and

1 “(7) evidence that the applicant intends to con-
2 centrate its efforts on the populations identified under
3 section 915.

4 **“SEC. 918. AUTHORIZATION OF APPROPRIATIONS.**

5 “There are authorized to be appropriated to make
6 grants under this chapter, \$5,000,000 for fiscal year 1991,
7 \$7,500,000 for fiscal year 1992, and \$10,000,000 for fiscal
8 year 1993.

9 **“SEC. 919. INCENTIVE GRANTS TO STATES TO LIMIT YOUTH**
10 **ACCESS TO TOBACCO PRODUCTS.**

11 “(a) **AUTHORIZATION OF APPROPRIATION.**—There is
12 authorized to be appropriated \$50,000,000 for fiscal year
13 1991, and such sums as may be necessary in each of the
14 fiscal years 1992 and 1993 to enable the Secretary of Health
15 and Human Services to make incentive grants to States.

16 “(b) **LEGISLATIVE REQUIREMENT.**—To receive a grant
17 under this section, a State shall enact legislation that—

18 “(A) prohibits the sale of a tobacco product
19 to a minor;

20 “(B) improves the enforcement of such an
21 existing prohibition; and

22 “(C) prohibits the sale of a tobacco product
23 in a vending machine unless the presence of
24 minors is not allowed on the premises where such
25 machine is located.

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1 “(c) CRITERIA FOR INCENTIVE GRANT AWARD.—To
2 receive a grant under this section a State shall—

3 “(1) certify that the legislative requirements of
4 subsection (b) have been met;

5 “(2) provide a description of such legislative
6 changes to the Center;

7 “(3) provide a plan for the implementation of such
8 legislative changes to the Center; and

9 “(4) describe the intended use of the grant funds.

10 “(d) PURPOSE OF GRANTS.—Funds made available
11 under a grant under this section may be used for—

12 “(1) the dissemination of information regarding
13 the changes in State law required under this section;

14 “(2) planning, establishing, and implementing
15 State procedures to implement such changes;

16 “(3) education concerning the need for such
17 changes;

18 “(4) other purposes as determined appropriate by
19 the Center.

20 “(e) DISTRIBUTION OF FUNDS.—Funds shall be distrib-
21 uted under this section so that no State shall receive more
22 than \$2,000,000 in each fiscal year under this section.

23 “(f) ENFORCEMENT AND COMPLIANCE.—

24 “(1) BY STATE.—A State receiving a grant under
25 subsection (a) shall ensure that the legislation referred

1 to in subsection (b) is effectively enforced to achieve
2 substantial compliance, as determined by the Assistant
3 Secretary for Health of the Department of Health and
4 Human Services, or the designee of such Assistant
5 Secretary.

6 “(2) REGULATIONS.—The Assistant Secretary or
7 designee referred to in paragraph (1) shall promulgate
8 regulations necessary to implement this section.

9 “(g) ADDITIONAL RESTRICTIONS.—A State receiving a
10 grant under subsection (a) may place restrictions on the sale
11 or distribution of tobacco products to minors in addition to
12 the requirements referred to in subsection (b).

13 “SEC. 920. MODEL STATE PROGRAM.

14 “(a) CENTER FOR TOBACCO PRODUCTS.—The Center
15 for Tobacco Products established under subtitle A shall pro-
16 vide assistance to not more than 10 States that desire to limit
17 or prohibit the sale of tobacco products to minors who are
18 under the age of 18.

19 “(b) NUMBER OF MODEL STATES.—The Center shall
20 designate not more than 10 States as model States for the
21 purpose of providing assistance under subsection (a).

22 “(c) CRITERIA FOR MODEL STATE DESIGNATION.—
23 To be designated as a model State under subsection (b), a
24 State shall—

1 “(1) have in effect a law that prohibits the sale of
2 tobacco products to individuals under the age of 18;

3 “(2) seek to improve the enforcement of the law
4 referred to in paragraph (1); and

5 “(3) have in effect a law or regulation that is in-
6 tended to reduce the use of, or access to, cigarette
7 vending machines by minors who are under the age of
8 18.

9 “(d) APPLICATION FOR MODEL STATE DESIGNA-
10 TION.—To be eligible to be designated as a model State
11 under subsection (b), a State shall submit an application that
12 shall include a designation of a lead agency that will work in
13 conjunction with the Center. Such agency shall—

14 “(1) have experience in matters that affect the
15 public health;

16 “(2) have expertise regarding the health effects
17 and use of tobacco products;

18 “(3) provide direct services or referrals for serv-
19 ices for smoking cessation;

20 “(4) administer activities intended to prevent the
21 initiation of use of tobacco products by minors who are
22 under the age of 18 and other individuals; and

23 “(5) have a lead office or department that will be
24 chiefly responsible for such functions.

1 “(e) STATE ASSURANCES.—To be eligible to be desig-
2 nated as a model State under subsection (b), a State shall
3 provide assurances that it will—

4 “(1) provide personnel sufficient to staff the lead
5 office or department referred to in subsection (d)(5);

6 “(2) establish a mechanism for the reporting of
7 citizen or other complaints to the designated office or
8 department concerning retailers that sell tobacco prod-
9 ucts to minors who are under the age of 18 in defiance
10 of State law;

11 “(3) establish a program to make the public aware
12 of the office or department referred to in subsection
13 (d)(5) and a mechanism for reporting complaints re-
14 garding retailers who sell tobacco products to minors
15 who are under the age of 18 in defiance of State law;

16 “(4) seek to further restrict the access of minors
17 who are under the age of 18 to vending machines that
18 sell tobacco products;

19 “(5) establish a procedure by which the lead State
20 agency may make a finding or a presumption that a re-
21 tailer or distributor has a pattern or practice of selling
22 tobacco products to minors in defiance of State law;
23 and

24 “(6) establish a procedure for lead State agencies
25 to report findings or presumptions under paragraph (5)

1 to the Center and for requesting assistance from the
2 Center.

3 "(f) ASSISTANCE TO MODEL STATES.—The Center
4 shall provide States designated as model States with—

5 "(1) printed materials for distribution to retailers
6 concerning the illegality of the sale of tobacco products
7 to minors;

8 "(2) support for, and assistance in, the planning of
9 meetings, conferences, and conventions to educate re-
10 tailers concerning the health hazards associated with
11 tobacco products, the addictive nature of tobacco prod-
12 ucts, and State laws that prohibit the sale of tobacco
13 products to minors;

14 "(3) assistance in the development of reporting
15 systems to identify specific retailers and retail chains
16 that consistently sell tobacco products to minors in de-
17 fiance of State law;

18 "(4) assistance in the development of notification
19 systems to make specific retailers aware that such re-
20 tailers are acting consistently in defiance of State law;
21 and

22 "(5) notices to be distributed to retailers concern-
23 ing the awareness of Federal authorities of the retailers
24 continued sale of tobacco products to minors in defi-
25 ance of State law.

1 "CHAPTER 3—ANTI-TOBACCO USE INTERVENTION
2 IN THE WORKPLACE

3 "SEC. 921. PURPOSE.

4 "The Center shall provide funds under this chapter to
5 attempt to reduce the incidence of smoking and other tobacco
6 use among workers with the highest prevalence of smoking
7 through demonstration grants to public and private entities,
8 including unions and other organizations.

9 "SEC. 922. GRANTS.

10 "The Center, shall make grants to assist in meeting the
11 costs of activities that will prevent the initiation, and encour-
12 age the cessation, of the use of tobacco products among
13 workers and their families, especially those individuals with
14 the highest prevalence of tobacco use.

15 "SEC. 923. APPLICATION.

16 "(a) REQUIREMENT.—No grant may be made under
17 this chapter unless an application therefor has been submitted
18 to, and approved by, the Center.

19 "(b) CONTENTS.—An application submitted under sub-
20 section (a) shall be in such form and submitted in such
21 manner as the Center shall by regulation prescribe, and shall
22 contain

23 "(1) a complete description of the type of the pro-
24 gram that is to be provided by or through a grant
25 awarded under under this chapter, that shall include—

1 “(A) a statement of goals and objectives of
2 the program that shall be consistent with the pur-
3 pose of this title;

4 “(B) a description of the activities to be car-
5 ried out with the assistance provided under the
6 grant that are designed to establish an ongoing
7 anti-tobacco program that may include working
8 cooperatively with existing anti-tobacco programs
9 in the community or State;

10 “(C) an assurance that activities conducted
11 under subparagraph (B) will show a concentration
12 of effort to change tobacco use behavior in those
13 groups identified in section 922 and will include
14 one or more of the activities described in section
15 924; and

16 “(D) a timetable for the proposed activities;

17 “(2) such agreements, assurances, and information
18 as the Center determines to be necessary to carry out
19 this section.

20 “(3) an assurance by the applicant of its ongoing
21 commitments to support the anti-tobacco use activities
22 after the grant period has expired;

23 “(4) such other information as the Secretary may
24 by regulation prescribe.

1 "SEC. 924. GRANT ACTIVITIES AND CRITERIA.

2 "(a) ACTIVITIES.—Assistance provided through a grant
3 awarded under this chapter shall be used for—

4 "(1) education and other intervention strategies to
5 promote the cessation of tobacco use among workers
6 who have the highest prevalence of tobacco use;

7 "(2) anti-smoking programs that are designed to
8 assist workers in making a behavior change to cease
9 using tobacco products;

10 "(3) education and other intervention strategies
11 that will serve to prevent initiation of smoking and
12 other tobacco use among children of workers who have
13 the highest prevalence of tobacco use;

14 "(4) activities to provide family members with
15 education concerning the health consequences of
16 tobacco use;

17 "(5) the development of audio visual or print ma-
18 terials that will facilitate any of the activities described
19 in this subsection when such appropriate audio or
20 visual materials are not otherwise available; and

21 "(6) training and education to develop the exper-
22 tise of a health educator or other personnel who will
23 perform the activities described in this subsection for
24 workers and their families.

25 "(b) CRITERIA.—The Center shall include in the crite-
26 ria for awarding of grants under this chapter—

1 “(1) the potential for success of the proposed plan
2 of the applicant;

3 “(2) evidence of any cooperative arrangements
4 with other entities that will participate in the proposed
5 plan;

6 “(3) evidence of the intent of the applicant to con-
7 centrate efforts toward blue collar workers and other
8 groups identified in section 922;

9 “(4) evidence that the activity is implemented
10 with the cooperation of the employer; and

11 “(5) any other criteria as the Center shall specify.

12 **“SEC. 925. AUTHORIZATION OF APPROPRIATIONS.**

13 “There are authorized to be appropriated to make
14 grants under this chapter, \$5,000,000 for each of the fiscal
15 years 1991 through 1993.”.

16 **SEC. 6. DRUG-FREE SCHOOLS AND COMMUNITIES ACT OF 1986.**

17 (a) **STATE PROGRAMS.**—Section 5122(a)(1) of the
18 Drug-Free Schools and Communities Act of 1986 (hereafter
19 in this section referred to as the “Act”) is amended by strik-
20 ing “drug” and inserting “drug, tobacco”.

21 (b) **STATE APPLICATIONS.**—Section 5123(b)(7) of the
22 Act is amended by striking “drug” and inserting “drug, to-
23 bacco, and alcohol”.

24 (c) **LOCAL DRUG ABUSE EDUCATION PREVENTION**
25 **PROGRAMS.**—Section 5125 of the Act is amended—

1 (1) in subsection (a) by striking "drug and alcohol
2 abuse prevention" and inserting "drug, tobacco, and
3 alcohol abuse prevention";

4 (2) in subsection (a)(9) by striking "drug" and in-
5 serting "drug, tobacco";

6 (3) in subsection (a)(11) by striking "drug" and in-
7 serting "drug, tobacco"; and

8 (4) in subsection (a)(12) by striking "drug" and in-
9 serting "drug, tobacco".

10 (d) LOCAL APPLICATIONS.—Section 5126(a)(2) of the
11 Act is amended—

12 (1) in subparagraph (B) by striking "drug" and in-
13 serting "drug, tobacco";

14 (2) in subparagraph (E) by—

15 (A) striking "applicants drug" and inserting
16 "applicants drug, tobacco";

17 (B) striking "and" at the end of clause (i);

18 (C) inserting "and" at the end of clause (ii);

19 and

20 (D) inserting at the end thereof the following
21 new clause (iii):

22 "(iii) how it will discourage use of to-
23 bacco products by students;"; and

24 (3) in subparagraph (I) by striking "conduct drug"
25 and inserting "conduct drug, tobacco".

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1 (e) **FEDERAL ACTIVITIES.**—Section 5132(b) of the Act
2 is amended—

3 (1) in paragraph (1) by inserting “and for dissemi-
4 nation pursuant to section 3 of the Comprehensive
5 Smoking Education Act of 1984” at the end thereof;
6 and

7 (2) in paragraph (2) by striking “drug” and insert-
8 ing “drug and tobacco”.

9 (f) **DEFINITIONS.**—Section 5141(b)(1) of the Act is
10 amended by striking “alcohol” and inserting “alcohol and to-
11 bacco,”.

12 **SEC. 7. NATIONAL COMMISSION ON DRUG-FREE SCHOOLS.**

13 Section 5051(i) of the Anti Drug Abuse Act of 1988 (20
14 U.S.C. 3172 note) is amended—

15 (1) in paragraph (1)—

16 (A) by inserting “, including anti-tobacco
17 education” after “program” in subparagraph (A);

18 (B) by inserting “or tobacco products” after
19 “drugs” in subparagraph (C); and

20 (C) by inserting “and tobacco” after “drug”
21 in subparagraph (D); and

22 (2) in paragraph (3), by inserting “and smoke-
23 free” after “drug-free”.

1 SEC. 8. TOBACCO EDUCATION AND INFORMATION REGARDING
2 CIGARETTE SMOKING.

3 Subtitle B of title IX of the Public Health Service Act
4 (as added by section 5) is amended by adding at the end
5 thereof the following:

6 "CHAPTER 4—TOBACCO USE AND EDUCATION IN
7 SCHOOLS

8 "SEC. 926. INCENTIVE GRANTS TO ESTABLISH SMOKE FREE
9 SCHOOLS.

10 "(a) IN GENERAL.—There is authorized to be appropri-
11 ated \$25,000,000 for fiscal year 1991, and such sums as may
12 be necessary for each of the fiscal years 1992 and 1993 to
13 enable the Secretary of Education to make incentive grants,
14 to be distributed in accordance with part F of title IV of the
15 Augustas F. Hawkins, Robert T. Stafford Elementary and
16 Secondary School Improvement Amendments of 1988 with
17 respect to the Secretary's fund for innovation and education.

18 "(b) LEGISLATIVE REQUIREMENT.—To receive a grant
19 under this section, a State shall enact legislation that—

20 "(1) creates smoke-free elementary and secondary
21 school buildings and grounds;

22 "(2) prohibits smoking by minors in school build-
23 ings and on school grounds and school buses;

24 "(3) requires schools to establish smoking areas
25 for adults that are separate from students, and to

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1 ensure adequate safeguards exist to protect students
2 from exposure to passive smoke; and

3 “(4) provides technical assistance to schools and
4 other assistance to implement the provision of this
5 section.

6 “(c) ENFORCEMENT AND COMPLIANCE.—

7 “(1) BY STATE.—A State receiving a grant under
8 subsection (a) shall ensure that the legislation referred
9 to in subsection (b) is effectively enforced to achieve
10 substantial compliance, as determined by the Secretary
11 of Education in consultation with the Secretary of
12 Health and Human Services.

13 “(2) REGULATIONS.—The Secretary of Educa-
14 tion, in consultation with the Secretary of Health and
15 Human Services shall promulgate regulations neces-
16 sary to implement this section.

17 “(d) ADDITIONAL RESTRICTIONS.—A State receiving a
18 grant under subsection (a) may place restrictions on the use
19 of tobacco products in schools in addition to the requirements
20 referred to in subsection (a). A State receiving funds under
21 this section shall provide assistance under this section only to
22 schools that are subject to State laws of the type described in
23 subsection (b).

1 **"CHAPTER 5—INFORMATION AND PROMOTION**
2 **REGARDING CIGARETTE SMOKING**

3 **"SEC. 927. DEFINITIONS.**

4 **"As used in this chapter:**

5 **"(1) COMMITTEE.—**The term 'Committee' means
6 the committee established under section 928(c), or the
7 committee established under section 3(b) of the Com-
8 prehensive Smoking Education Act (15 U.S.C.
9 1341(b)) as such section existed before the date of en-
10 actment of this section.

11 **"(2) UNITED STATES.—**The term 'United States',
12 when used in a geographical sense, includes the several
13 States, the District of Columbia, the Commonwealth of
14 Puerto Rico, Guam, the Virgin Islands, American
15 Samoa, Wake Island, Midway Islands, Kingman Reef,
16 Johnston Island, and the installations of the Armed
17 Forces.

18 **"SEC. 928. SMOKING RESEARCH, EDUCATION, AND INFORMA-**
19 **TION IN GENERAL.**

20 **"(a) ESTABLISHMENT OF PROGRAM.—**The Secretary
21 shall establish and carry out a program to inform the public
22 of any dangers to human health presented by cigarette
23 smoking.

24 **"(b) ADMINISTRATION OF PROGRAM.—**In carrying out
25 the program established under subsection (a), the Secretary
26 shall—

1 “(1) conduct and support research on the effects
2 of cigarette smoking and of passive smoke on human
3 health and develop materials for informing the public of
4 such effect;

5 “(2) coordinate all research and educational pro-
6 grams and other activities within the Department of
7 Health and Human Services that relate to the effect of
8 cigarette smoking and passive smoke on human health
9 and coordinate, through the Interagency Committee on
10 Smoking and Health (established under subsection (c)),
11 such activities with similar activities of other Federal
12 agencies and of private agencies;

13 “(3) establish and maintain a liaison with appro-
14 priate private entities, other Federal agencies, and
15 State and local public agencies concerning activities re-
16 lating to the effect of cigarette smoking and passive
17 smoke on human health;

18 “(4) collect, analyze, and disseminate (through
19 publications, bibliographies, and otherwise) information,
20 studies, and other data relating to the effect of ciga-
21 rette smoking and passive smoke on human health, and
22 develop standards, criteria, and methodologies for im-
23 proved information programs related to smoking and
24 health;

1 “(5) compile and make available information on
2 State and local laws relating to the use and consump-
3 tion of cigarettes; and

4 “(6) undertake any other additional information
5 and research activities that the Secretary determines
6 necessary and appropriate to carry out this section.

7 “(c) COMMITTEE.—

8 “(1) ESTABLISHMENT.—To carry out the activi-
9 ties described in paragraphs (2) and (3) of subsection
10 (b), the Secretary shall establish an Interagency Com-
11 mittee on Smoking and Health.

12 “(2) COMPOSITION.—The Committee established
13 under paragraph (1) shall be composed of—

14 “(A) members appointed by the Secretary
15 from appropriate institutes and agencies of the
16 Department, that may include the National
17 Cancer Institute, the National Heart, Lung, and
18 Blood Institute, the National Institute of Child
19 Health and Human Development, the National
20 Institute on Drug Abuse, and Health Resources
21 and Services Administration, and the Centers for
22 Disease Control;

23 “(B) at least one member appointed from the
24 Federal Trade Commission, the Department of
25 Education, the Department of Labor, and any

1 other Federal agency designated by the Secretary,
2 the appointment of whom shall be made by the
3 head of the entity from which the member is ap-
4 pointed; and

5 "(C) five members appointed by the Secre-
6 tary from physicians and scientists who represent
7 private entities involved informing the public
8 about the health effects of smoking.

9 "(3) CHAIRPERSON.—The Secretary shall desig-
10 nate the chairperson of the Committee established
11 under paragraph (1).

12 "(4) EXPENSES.—While away from their homes
13 or regular places of business in the performance of
14 services for the Committee established under paragraph
15 (1), members of such Committee shall be allowed
16 travel expenses, including per diem in lieu of subsist-
17 ence, in the manner provided by sections 5702 and
18 5703 of title 5 of the United States Code.

19 "(5) OTHER INFORMATION.—The Secretary shall
20 make available to the Committee established under
21 paragraph (1) such staff, information, and other assist-
22 ance as it may require to carry out its activities
23 effectively.

24 "(d) REPORT.—Not later than January 1, 1990, and
25 biennially thereafter, the Secretary shall prepare and submit,

1 to the appropriate Committees of Congress, a report that
2 shall contain—

3 “(1) an overview and assessment of Federal ac-
4 tivities undertaken to inform the public of the health
5 consequences of smoking and passive smoke and the
6 extent of public knowledge of such consequences;

7 “(2) a description of the activities of the Secretary
8 and the Committee under subsection (a);

9 “(3) information regarding the activities of the pri-
10 vate sector taken in response to the effects of smoking
11 on health; and

12 “(4) such recommendations as the Secretary may
13 consider appropriate.

14 **“SEC. 928. PUBLIC EDUCATION REGARDING SMOKELESS**
15 **TOBACCO.**

16 “(a) **DEFINITION.**—As used in this section and section
17 929, the term ‘smokeless tobacco’ means any finely cut,
18 ground, powdered, or leaf tobacco that is intended to be
19 placed in the oral cavity.

20 “(b) **DEVELOPMENT.**—

21 “(1) **IN GENERAL.**—The Secretary shall establish
22 and carry out a program to inform the public of any
23 dangers to human health resulting from the use of
24 smokeless tobacco products.

1 “(2) DUTIES OF SECRETARY.—In carrying out
2 the program established under paragraph (1) the Secre-
3 tary shall—

4 “(A) develop educational programs and ma-
5 terials and public service announcements respect-
6 ing the dangers to human health from the use of
7 smokeless tobacco;

8 “(B) make such programs, materials, and an-
9 nouncements available to States, local govern-
10 ments, school systems, the media, and such other
11 entities as the Secretary determines appropriate
12 to further the purposes of this part;

13 “(C) conduct and support research on the
14 effect of smokeless tobacco and health.

15 “(3) CONSULTATION.—In developing programs,
16 materials, and announcements under paragraph (2), the
17 Secretary shall consult with the Secretary of Educa-
18 tion, medical and public health entities, consumer
19 groups, representatives of manufacturers of smokeless
20 tobacco products, and other appropriate entities.

21 “(c) ASSISTANCE.—The Secretary may provide techni-
22 cal assistance and make grants to States—

23 “(1) to assist in the development of educational
24 programs and materials and public service announce-

1 ments respecting the dangers to human health from the
2 use of smokeless tobacco;

3 “(2) to assist in the distribution of such programs,
4 materials, and announcements through the States; and

5 “(3) to establish 18 as the minimum age for the
6 purchase of smokeless tobacco.

7 **“SEC. 929. REPORTS.**

8 “Not later than January 1, 1990, and biennially there-
9 after, the Secretary shall prepare and submit, to the appro-
10 priate Committees of Congress, a report containing—

11 “(1) a description of the effects of health educa-
12 tion efforts on the use of smokeless tobacco products;

13 “(2) a description of the use by the public of
14 smokeless tobacco products;

15 “(3) an evaluation of the health effects of smoke-
16 less tobacco products and the identification of areas ap-
17 propriate for further research; and

18 “(4) such recommendations for legislation and
19 administrative action as the Secretary considers
20 appropriate.

21 **“CHAPTER 6—GENERAL PROVISIONS**

22 **“SEC. 935. DEFINITIONS.**

23 “As used in this subtitle:

1 “(1) RECIPIENT.—The term ‘recipient’ means
2 any entity or individual that has received a grant under
3 this subtitle.

4 “(2) TOBACCO USE.—The term ‘tobacco use’
5 means the use of any tobacco product that is used
6 through smoking, inhalation, or mastication, and such
7 term shall include the use of nasal and oral snuff.

8 “(3) UNITS OF LOCAL GOVERNMENT.—The term
9 ‘units of local government’ shall include Federally rec-
10 ognized Indian tribes.

11 “SEC. 936. ADMINISTRATIVE PROVISIONS.

12 “(a) AMOUNT AND METHOD OF PAYMENT.—

13 “(1) AMOUNT.—The Secretary shall determine
14 the amount of a grant awarded under this title.

15 “(2) METHOD.—Payments under grants awarded
16 under this subtitle may be made in advance, on the
17 basis of estimates, or by way of reimbursement, with
18 necessary adjustments because of underpayments or
19 overpayments, and in such installments and on such
20 terms and conditions as the Secretary determines nec-
21 essary to carry out the purposes of such grants.

22 “(b) MAINTENANCE OF EFFORT.—No grant shall be
23 made under this subtitle unless the Secretary determines that
24 there is satisfactory assurance that Federal funds made avail-
25 able under such a grant for any period will be so used as to

1 supplement and, to the extent practical, increase the level of
2 State, local, and other non-Federal funds that would, in the
3 absence of such Federal funds, be made available for the pro-
4 gram for which the grant is to be made and will in no event
5 supplant such State, local and other non-Federal funds.

6 “(c) SUPPLIES, EQUIPMENT, AND EMPLOYEE
7 DETAIL.—

8 “(1) IN GENERAL.—The Secretary, at the request
9 of a recipient of a grant under this subtitle, may reduce
10 the amount of such a grant by—

11 “(A) the fair market value of any supplies
12 or equipment furnished to the recipient by the
13 Secretary;

14 “(B) the amount of pay, allowances, and
15 travel expenses incurred by any officer or employ-
16 ee of the Federal government when such officer
17 or employee has been detailed to the recipient;

18 “(C) the amount of any other costs incurred
19 in connection with the detail of an officer or em-
20 ployee as described in subparagraph (B);

21 when the furnishing of such supplies or equipment or
22 the detail of such an officer or employee is for the con-
23 venience, and at the request, of such recipient and for
24 the purpose of carrying out activities under the grant.

1 “(2) USE OF AMOUNT OF REDUCTION.—The
2 amount by which any grant awarded under this subtitle
3 is reduced under this subsection shall be available for
4 payment by the Secretary of the costs incurred in fur-
5 nishing the supplies or equipment, or in detailing the
6 personnel, on which the reduction of such grant is
7 based, and such amount shall be considered as part of
8 the grant that has been paid to the recipient.

9 “(d) RECORDS.—Each recipient of a grant under this
10 subtitle shall keep such records as the Secretary determines
11 appropriate, including records that fully disclose—

12 “(1) the amount and disposition by such recipient
13 of the proceeds of such grant;

14 “(2) the total cost of the activity for which such
15 grant was made;

16 “(3) the amount of the cost of the activity for
17 which such grant was made that has been received
18 from other sources; and

19 “(4) such other records as will facilitate an effec-
20 tive audit.

21 “(e) AUDIT AND EXAMINATION OF RECORDS.—The
22 Secretary and the Comptroller General of the United States
23 shall have access to any books, documents, papers, and
24 records of the recipient of a grant under this part, for the

1 purpose of conducting audits and examinations of such recipi-
2 ent that are pertinent to such grant.

3 "SUBTITLE C—GENERAL PROVISIONS

4 "SEC. 941. PROHIBITED ACTS.

5 "The following acts and the causing thereof are
6 prohibited:

7 "(1) ADULTERATION OR MISBRANDING.—The
8 adulteration or misbranding of any tobacco product.

9 "(2) ADULTERATION OR MISBRANDING IN A TER-
10 RITORY.—The adulteration or misbranding within any
11 Territory of any tobacco product.

12 "(3) TRADE SECRET.—The using by any person
13 to the advantage of such person, or revealing, other
14 than to the Secretary or officers or employees of the
15 Department, or to the courts when relevant in any ju-
16 dicial proceeding under this title, any information ac-
17 quired under authority of this title concerning any
18 method or process that as a trade secret is entitled to
19 protection. This paragraph shall not be construed to
20 prohibit disclosure of information to Congress.

21 "(4) MISREPRESENTATION OF COMPLIANCE
22 WITH TITLE.—The using, on the labeling of any to-
23 bacco product of any representation or suggestion that
24 approval of an application with respect to such product
25 is in effect under this title.

1 “(5) REFERENCES.—The using, in labeling, of
2 any reference to any report or analysis furnished in
3 compliance with this title.

4 “(6) COPIES OF MATERIAL.—The failure of the
5 manufacturer of a tobacco product to maintain for
6 transmittal, or to transmit, to any individual who
7 makes a written request for information as to such
8 product, true and correct copies of all printed matter
9 that are required to be included in any package of a
10 tobacco product or such other printed matter as is ap-
11 proved by the Secretary. Nothing in this paragraph
12 shall be construed to exempt any person from any la-
13 beling requirement imposed by or under other provi-
14 sions of this title.

15 “(7) REPORTS, RECORDS, REQUIREMENTS.—The
16 failure to make the reports required, the failure to
17 retain the records required, or the failure to meet the
18 requirements prescribed, under this title.

19 “SEC. 942. INJUNCTIONS AND PENALTIES.

20 “(a) INJUNCTION PROCEEDINGS.—

21 “(1) IN GENERAL.—The district courts of the
22 United States shall have jurisdiction, for cause shown,
23 and subject to the provisions of section 381 (relating to
24 notice to opposite party) of title 28, United States
25 Code, to restrain violations of section 941.

1 “(2) VIOLATIONS.—In case of violation of an in-
2 junction or restraining order issued under this section,
3 which also constitutes a violation of this title, trial
4 shall be by the court, or, upon demand of the accused,
5 by a jury. Such trial shall be conducted in accordance
6 with the practice and procedure applicable in the case
7 of proceedings subject to the provisions of Rule 42(b),
8 Federal Rules of Criminal Procedure.

9 “(b) PENALTIES.—

10 “(1) FINE AND IMPRISONMENT.—Any person
11 who violates a provision of section 941 shall be impris-
12 oned for not more than 1 year or fined in a manner
13 consistent with the Criminal Fine Enforcement Act of
14 1984, or both.

15 “(2) SUBSEQUENT VIOLATIONS.—Notwithstand-
16 ing the paragraph (1), if any person commits such a
17 violation after a prior conviction of such person under
18 this section has become final, or commits such a viola-
19 tion intentional to defraud or mislead, such person shall
20 be imprisoned for not more than 3 years or fined in a
21 manner consistent with the Criminal Fine Enforcement
22 Act of 1984, or both.

23 “(c) DENIAL OF DELIVERY.—With regard to a model
24 State designated as such under section 920, any retailer for
25 whom a State makes a finding that such retailer is selling

1 tobacco products to minors in violation of State law may be
2 denied delivery of tobacco products by all distributors of such
3 products within that State for a period not to exceed 60 days,
4 if such retailer has been notified that such a finding has been
5 made. Such 60 day period shall begin on the date that such
6 retailer is notified by the State of such finding.

7 "SEC. 943. SEIZURE.

8 "(a) TIME FOR INITIATION OF PROCEEDINGS.—

9 "(1) INTRODUCTION TO INTERSTATE COM-
10 MERCE.—

11 "(A) IN GENERAL.—Any tobacco product
12 that is adulterated or misbranded may be proceed-
13 ed against on libel of information and condemned
14 in any district court of the United States or
15 United States court of a Territory within the
16 jurisdiction of which the product is found.

17 "(B) REMOVAL.—

18 "(i) STIPULATION.—Any proceeding
19 pending or instituted under subparagraph (A)
20 shall, on application of the claimant, season-
21 ably made, be removed for trial to any dis-
22 trict agreed on by stipulation between the
23 parties.

24 "(ii) FAILURE TO STIPULATE WITHIN
25 REASONABLE TIME.—In the case of a fail-

1 ure to stipulate within a reasonable time
2 under clause (i), the claimant may apply to
3 the court of the district in which the seizure
4 has been made, and such court (after giving
5 the United States attorney for such district
6 reasonable notice and opportunity to be
7 heard) shall by order, unless good cause to
8 the contrary is shown, specify a district of
9 reasonable proximity to the claimant's princi-
10 pal place of business to which the case shall
11 be removed for trial.

12 “(2) MODEL STATES.—In the case of tobacco
13 products, within a State that has been designated a
14 model State by the Center, where sale of such prod-
15 ucts is in violation of State law, and where there is a
16 finding that a retailer is, or has been, engaged in a
17 pattern or practice of sale to minors, the Secretary—

18 “(A) may place a temporary ban on the ship-
19 ping of tobacco products to such retailer by dis-
20 tributors in that State, or the tobacco products of
21 such retailer may be seized by the Secretary in
22 accordance with section 943;

23 “(B) shall inform the appropriate distributor
24 in that State that supplies the tobacco products to
25 such retailer, that a temporary ban exists on the

1 shipping of such products to such retailer, and the
2 distributor shall not continue to distribute to such
3 retailer, or the Secretary may seize such products
4 from the distributor;

5 "(C) shall notify the retailer described in sub-
6 paragraph (B) and its distributor of the impending
7 penalties to be applied under this subsection and
8 the date on which such penalties may be imple-
9 mented;

10 "(D) shall, not later than 60 days after the
11 notification and implementation of the penalties as
12 provided for in this section, provide the penalized
13 retailer with the opportunity for an informal hear-
14 ing; and

15 "(E) may assess additional penalties or
16 impose a further forfeiture, as provided in this
17 section, to a penalized retailer or distributor if
18 such retailer or distributor violates the bar on
19 shipping to such retailer as provided for in sub-
20 paragraphs (A) and (B).

21 "(b) PROCEDURE.—

22 "(1) IN GENERAL.—The tobacco product, equip-
23 ment, or other thing proceeded against under this sec-
24 tion shall be liable to seizure by process pursuant to
25 the libel, and the procedure in cases under this section

1 shall conform, as nearly as possible, to the procedure
2 in admiralty, except that on the demand of either party
3 any issue of fact joined in any such case shall be tried
4 by jury.

5 “(2) CONSOLIDATION.—

6 “(A) IN GENERAL.—When libel for condem-
7 nation proceedings under this section, involving
8 the same claimant and the same issues of adulter-
9 ation or misbranding, are pending in two or more
10 jurisdictions, such pending proceedings, on appli-
11 cation of the claimant seasonably made to the
12 court of one such jurisdiction, shall be consolidat-
13 ed for trial by order of such court, and be tried
14 in—

15 “(i) any district selected by the claimant
16 where one of such proceedings is pending; or

17 “(ii) a district agreed on by stipulation
18 between the parties.

19 “(B) OTHER PLACE OF JURISDICTION.—If
20 no order for consolidation is made under subpara-
21 graph (A) within a reasonable time, the claimant
22 may apply to the court of one such jurisdiction,
23 and such court (after providing the United States
24 attorney for such district with reasonable notice
25 and an opportunity to be heard) shall by order,

1 unless good cause to the contrary is shown, speci-
2 fy a district of reasonable proximity to the princi-
3 pal place of business of the claimant, in which all
4 such pending proceedings shall be consolidated for
5 trial and tried.

6 “(C) **FIXED TRIAL DATE AND NOTIFICA-**
7 **TION.**—Orders of consolidation under this para-
8 graph shall not apply so as to require the removal
9 of any case in which the date for trial has been
10 fixed. The court granting such order shall give
11 prompt notification thereof to the other courts
12 having jurisdiction of the cases covered thereby.

13 “(c) **DISPOSAL OF CONDEMNED PROPERTY.**—

14 “(1) **METHOD.**—Any tobacco product condemned
15 under this section shall, after the entry of the condem-
16 nation decree, be disposed of by destruction or sale as
17 the court may, in accordance with the provisions of
18 this section, direct and if such products are sold the
19 proceeds from such sale, less the legal costs and
20 charges, shall be paid into the Treasury of the United
21 States.

22 “(2) **LIMITATION.**—

23 “(A) **IN GENERAL.**—Tobacco products shall
24 not be sold under decrees issued under this sec-
25 tion contrary to the provisions of this title or the

1 laws of the jurisdiction in which such products are
2 sold.

3 “(B) EXCEPTION.—After the entry of the
4 decree of condemnation and on the payment of
5 the costs of such proceedings and the execution of
6 a good and sufficient bond conditioned on such to-
7 bacco products not being sold or disposed of con-
8 trary to the provisions of this title or the laws of
9 any State or Territory in which sold, the court
10 may, by order, direct that such product be deliv-
11 ered to the owner thereof to be destroyed or
12 brought into compliance with the provisions of
13 this title under the supervision of an officer or em-
14 ployee duly designated by the Secretary.

15 “(C) EXPENSES.—The expenses of any su-
16 pervision under subparagraph (B) shall be paid by
17 the person obtaining release of the tobacco prod-
18 uct under bond.

19 “(d) EXPENSES.—When a decree of condemnation is
20 entered against the tobacco product under this section, court
21 costs and fees, and storage and other proper expenses, shall
22 be awarded against the person, if any, intervening as claim-
23 ant of the product.

24 “(e) DUTIES AND POWERS OF COURT.—In the case of
25 removal for trial of any case as provided by this section—

1 “(1) the clerk of the court from which removal is
2 made shall promptly transmit to the court in which the
3 case is to be tried all records in the case necessary in
4 order that such court may exercise jurisdiction; and

5 “(2) the court to which such case was removed
6 shall have the powers and be subject to the duties for
7 purposes of such case, which the court from which re-
8 moval was made would have had, or to which such
9 court would have been subject, if such case had not
10 been removed.

11 **“SEC. 944. HEARING BEFORE REPORT OF CRIMINAL VIOLA-**
12 **TION.**

13 “Prior to the reporting of any violation of this title by
14 the Secretary to any United States attorney for the institu-
15 tion of a criminal proceeding, the person against whom such
16 proceeding is contemplated shall be given appropriate notice
17 and an opportunity to present such person's views, either
18 orally or in writing, with regard to such contemplated
19 proceeding.

20 **“SEC. 945. REPORT OF MINOR VIOLATIONS.**

21 “Nothing in this title shall be construed as requiring the
22 Secretary to report for prosecution, or for the institution of
23 libel or injunction proceedings, for minor violations of this
24 title whenever such person believes that the public interest

1 will be adequately served by a suitable written notice or
2 warning.

3 **"SEC. 946. PROCEEDINGS IN NAME OF UNITED STATES; PROVI-**
4 **SION AS TO SUBPOENAS.**

5 "All proceedings for the enforcement, or to restrain vio-
6 lations, of this title shall be by and in the name of the United
7 States. Subpoenas for witnesses who are required to attend a
8 court of the United States, in any district, may run into any
9 other district in any such proceeding.

10 **"SUBTITLE D—MISBRANDED AND ADULTERATED**
11 **TOBACCO PRODUCTS**

12 **"SEC. 951. MISBRANDED TOBACCO PRODUCTS.**

13 **"(a) IN GENERAL.—**A tobacco product shall be consid-
14 ered to be misbranded for not disclosing certain information
15 to the public—

16 **"(1) if the manufacturer, importer, or packager of**
17 **the product does not provide the Center with the list of**
18 **tobacco additives contained in the product by brand**
19 **name for education of the public in accordance with**
20 **section 953(a) or (b); or**

21 **"(2) if it does not disclose to the public, tar, nico-**
22 **tine, carbon monoxide, and other harmful constituents**
23 **in the tobacco and tobacco smoke, and smokeless to-**
24 **bacco, as required under section 954.**

1 “(b) ADDITIONAL INFORMATION CLARIFICATION AND
2 MODIFICATIONS.—

3 “(1) ADDITIONAL INFORMATION.—Nothing in
4 this title the Federal Cigarette Labeling and Advertis-
5 ing Act (15 U.S.C. 1333 et seq.), or the Comprehen-
6 sive Smokeless Tobacco Health Education Act of 1986
7 (15 U.S.C. 4401 et seq.) shall prohibit a manufacturer
8 of tobacco products from providing consumers with in-
9 formation concerning tobacco product constituents, to-
10 bacco smoke, and the adverse effects of tobacco use in
11 addition to the information that such manufacturers are
12 required to provide pursuant to this chapter and the
13 Federal Cigarette Labeling and Advertising Act (15
14 U.S.C. 1333 et seq.) and the Comprehensive Smoke-
15 less Tobacco Health Education Act of 1986 (15
16 U.S.C. 4401 et seq.).

17 “(2) EFFECT ON LIABILITY LAW.—Nothing in
18 this title shall relieve any person from liability at
19 common law or under State statutory law to any other
20 person.

21 “SEC. 952. ADULTERATED TOBACCO PRODUCTS.

22 “A tobacco product shall be considered to be
23 adulterated—

1 “(1) if the level of any tobacco additive contained
2 in the product is in violation of a requirement under
3 section 953(b);

4 “(2) if the nicotine, tar, carbon monoxide, or other
5 harmful constituent level has not been established
6 under section 954;

7 “(3) if it contains any additive or any substance
8 that is considered to be poisonous or render it signifi-
9 cantly injurious to health;

10 “(4) if it contains in whole or in part any filthy,
11 putrid, or decomposed substance; or

12 “(5) if it has been prepared, packed, or held under
13 unsanitary conditions where it may have become con-
14 taminated with filth or where it may have been ren-
15 dered more injurious to health.

16 **“SEC. 953. TOBACCO ADDITIVES.**

17 **“(a) IN GENERAL.—**It shall be unlawful for any person
18 to manufacture, import, or package, any tobacco product
19 unless such person has provided to the Center a complete list
20 of each tobacco additive used in the manufacture of each to-
21 bacco product brand name and the quantity of such additive.

22 **“(b) DISCLOSURE REQUIREMENTS.—**

23 **“(1) PRESCRIPTION.—**The Secretary shall by
24 regulation prescribe disclosure requirements for infor-
25 mation on packages of tobacco products or in package

1 inserts that are provided with such products, or by any
2 other means so that the public will be adequately in-
3 formed of the tobacco additives contained in any brand
4 or variety of tobacco products.

5 “(2) REDUCTIONS AND PROHIBITIONS ON USE OF
6 ADDITIVES.—If the Center determines that any tobac-
7 co additive in a tobacco product, either by itself or in
8 conjunction with any other additive, presents unneces-
9 sary increased risks to health, the Center may require
10 that such levels of the tobacco additive in the tobacco
11 product be reduced or that it be prohibited from use.

12 “SEC. 954. NICOTINE, TAR, CARBON MONOXIDE, AND OTHER
13 CONSTITUENTS.

14 “(a) LISTING OF BRANDS.—It shall be unlawful for any
15 person to manufacture, import, or package any tobacco prod-
16 uct unless such person has provided the Center with a com-
17 plete list of all brands of such tobacco products that includes
18 the levels of the tar, nicotine, carbon monoxide, and other
19 constituent (as determined by the Center) for each brand as
20 determined by the manufacturer, importer, or their represent-
21 atives. Data necessary to verify such levels shall be made
22 available to the Center on the request of the Center.

1 "SEC. 953. REPEAL OF FEDERAL PREEMPTION ON STATE REG-
2 ULATION OF LOCAL ADVERTISERS

3 "Nothing in this subtitle, section 5 of the Federal Ciga-
4 rette Labeling and Advertising Act (15 U.S.C. 1332, et seq.),
5 or the Comprehensive Smokeless Tobacco Health Education
6 Act (15 U.S.C. 4401 et seq.) shall prevent any State or local
7 government from enacting additional restrictions on the ad-
8 vertising, promotion, sale, or distribution of tobacco products
9 to persons under the age of 18, or on the placement or loca-
10 tion of advertising for tobacco products that is displayed
11 solely within the geographic area governed by the applicable
12 State or local government, such as advertising on billboards
13 or on transit vehicles, as long as the restrictions are consist-
14 ent with and no less restrictive than the requirements of this
15 subtitle and Federal law.

16 "SEC. 956. EXAMINATIONS AND INVESTIGATIONS.

17 "(a) AUTHORITY.—

18 "(1) IN GENERAL.—The Center is authorized to
19 conduct examinations and investigations for the pur-
20 poses of this title through officers and employees of the
21 Department or through any health officer or employee
22 of any State, Territory, or political subdivision thereof,
23 duly commissioned by the Secretary as an officer of the
24 Department.

25 "(2) PUERTO RICO AND THE TERRITORIES.—In
26 the case of tobacco products packed in the Common-

1 wealth of Puerto Rico or a Territory the Center shall
2 attempt to make inspection of such products at the first
3 point of entry within the United States, when in the
4 opinion of the Center and with due regard to the en-
5 forcement of all the provisions of this title, the facilities
6 at the disposal of the Center will permit of such
7 inspection.

8 “(3) DEFINITION.—As used in this subsection the
9 term ‘United States’ means the States and the District
10 of Columbia.

11 “(b) SAMPLES.—Where a sample of a tobacco product
12 is collected for analysis under this title the Center shall, on
13 request, provide a part of such official sample for examination
14 or analysis by any person named on the label of the product,
15 or the owner thereof, or the attorney or agent of such per-
16 sons, except that the Secretary may, by regulation, make
17 such reasonable exceptions from, and impose such reasonable
18 terms and conditions relating to, the operation of this subsec-
19 tion as the Secretary finds necessary for the proper adminis-
20 tration of the provisions of this title.

21 “(c) INSPECTION OF RECORDS.—For purposes of en-
22 forcement of this title, records of any department or inde-
23 pendent establishment in the executive branch of the Federal
24 government shall be open to inspection by any official of the

1 Department of Health and Human Services duly authorized
2 by the Center to make such inspection.

3 **"SEC. 957. NONTOBACCO NICOTINE CONTAINING PRODUCTS.**

4 "Any product that contains nicotine but that is not a
5 tobacco product as defined in section 961, shall be considered
6 to be a drug under section 201(g)(1)(C) of the Federal Food,
7 Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)(C)).

8 **"SUBTITLE E—MISCELLANEOUS PROVISIONS**

9 **"SEC. 961. DEFINITIONS.**

10 "As used in this title:

11 "(1) **ADVERTISEMENT.**—The term 'advertise-
12 ment' means—

13 "(A) all newspaper and magazine advertise-
14 ments and advertising inserts, billboards, posters,
15 signs, decals, banners, matchbook advertising,
16 point-of-purchase display material (except price
17 information), and all other printed or other materi-
18 al used for promoting the sale or consumption of
19 tobacco products to consumers; and

20 "(B) any other means used to promote the
21 purchase of tobacco products.

22 "(2) **CENTER.**—The term 'Center' means the
23 Center for Tobacco Products Control and Education
24 established under section 901.

1 “(3) CONSTITUENT.—The term ‘constituent’
2 means any element of a tobacco product that is not an
3 additive.

4 “(4) DEPARTMENT.—The term ‘Department’
5 means the Department of Health and Human Services.

6 “(5) IMMEDIATE CONTAINER.—The term ‘imme-
7 diate container’ does not include package liners.

8 “(6) INFORMAL HEARING.—The term ‘informal
9 hearing’ means a hearing which is not subject to sec-
10 tion 554, 556, or 557 of title 5 of the United States
11 Code and which provides that—

12 “(A) the presiding officer in the hearing shall
13 be designated by the Secretary from officers and
14 employees of the Department who have not par-
15 ticipated in any action of the Secretary that is the
16 subject of the hearing and who are not directly re-
17 sponsible to an officer or employee of the Depart-
18 ment who has participated in any such action;

19 “(B) each party to the hearing shall have the
20 right at all times to be advised and accompanied
21 by an attorney;

22 “(C) prior to the hearing, each party to the
23 hearing shall be given reasonable notice of the
24 matters to be considered at the hearing, including
25 a comprehensive statement of the basis for the

1 action taken or proposed by the Secretary that is
2 the subject of the hearing and a general summary
3 of the information that will be presented by the
4 Secretary at the hearing in support of such action;

5 "(D) at the hearing the parties to the hear-
6 ing shall have the right to hear a full and com-
7 plete statement of the action of the Secretary that
8 is the subject of the hearing together with the in-
9 formation and reasons supporting such action, to
10 conduct reasonable questioning, and to present
11 any oral or written information relevant to such
12 action, including the calling of witnesses;

13 "(E) the presiding officer in such hearing
14 shall prepare a written report of the hearing to
15 which shall be attached all written material pre-
16 sented at the hearing;

17 "(F) the participants in the hearing shall be
18 given the opportunity to review and correct or
19 supplement the presiding officer's report of the
20 hearing; and

21 "(G) the Secretary may require the hearing
22 to be transcribed, or a party to the hearing shall
23 have the right to have the hearing transcribed at
24 such party's expense. Any transcription of a hear-

1 ing shall be included in the presiding officer's
2 report of the hearing.

3 “(7) LABEL.—The term ‘label’ means a display of
4 written, printed, or graphic matter on the immediate
5 container of any tobacco product, the outside container
6 or wrapper, if such exists, of the retail package of such
7 product, or is easily legible through the outside con-
8 tainer or wrapper.

9 “(8) LABELING.—“The term ‘labeling’ means all
10 labels and other written, printed, or graphic matter—

11 “(A) on any tobacco product or any of its
12 containers or wrappers; or

13 “(B) accompanying such products.

14 “(9) MINOR.—The term ‘minor’ means any indi-
15 vidual who is under the age of 18 years.

16 “(10) PERSON.—The term ‘person’ includes indi-
17 vidual, partnership, corporation, and association.

18 “(11) PROMOTION.—The term ‘promotion’ means
19 any marketing communication method that informs,
20 persuades or reminds consumers of a tobacco product
21 or the attributes, image, or brand name of such product
22 or, motivates consumers to sample or try that product.

23 “(12) SECRETARY.—The term ‘Secretary’ means
24 the Secretary of Health and Human Services.

1 “(13) STATE.—The term ‘State’ means any State
2 or Territory of the United States, the District of
3 Columbia, and the Commonwealth of Puerto Rico.

4 “(14) TAR.—The term ‘tar’ means mainstream
5 total particulate matter minus nicotine and water.

6 “(15) TOBACCO ADDITIVE.—The term ‘tobacco
7 additive’ means any ingredient that is added to a
8 tobacco product in the process of manufacturing or
9 producing a tobacco product.

10 “(16) TOBACCO PRODUCT.—The term ‘tobacco
11 product’ means cigarettes, cigars, little cigars, pipe to-
12 bacco, smokeless tobacco, snuff, and chewing tobacco,
13 and other products that contain tobacco that are
14 intended for human use.

15 **“SEC. 962. CONSTRUCTION.**

16 “Nothing in this title shall be construed to repeal any
17 requirement of the Federal Cigarette Labeling and Advertis-
18 ing Act (15 U.S.C. 1331 et seq.), and the Comprehensive
19 Smokeless Tobacco Health Education Act (15 U.S.C. 4401
20 et seq.).”.

21 **SEC. 9. TECHNICAL AMENDMENTS.**

22 **(a) COMPREHENSIVE SMOKING EDUCATION ACT.—**
23 Section 2 of the Comprehensive Smoking Education Act (15
24 U.S.C. 1331) is repealed.

1 (b) COMPREHENSIVE SMOKELESS TOBACCO HEALTH
2 EDUCATION ACT OF 1986.—Sections 2, 4, 5, and 8 of the
3 Comprehensive Smokeless Tobacco Health Education Act of
4 1986 (15 U.S.C. 4401, 4403, 4404, and 4407) are repealed.

5 SEC. 10. MISCELLANEOUS PROVISIONS.

6 (a) CONFIDENTIALITY.—Section 7(b) of the Federal
7 Cigarette Labeling and Advertising Act (15 U.S.C. 1335a(b))
8 is amended by striking out paragraph (2).

9 (b) WARNING LABELS.—Section 4(a) of the Federal
10 Cigarette Labeling and Advertising Act (15 U.S.C. 1333(a))
11 is amended by striking out “SURGEON GENERAL’S
12 WARNING: Cigarette Smoke Contains Carbon Monoxide,”
13 each place such occurs in paragraphs (1), (2), and (3), and
14 inserting in lieu thereof the following: “SURGEON GEN-
15 ERAL’S WARNING: Smoking is Addictive. Once you start
16 you may not be able to stop.”.

17 SEC. 11. CONSTRUCTION.

18 Nothing in this Act, or an amendment made by this Act,
19 shall be construed to limit, restrict, expand, or otherwise
20 affect the authority of the Federal Trade Commission.

○

MEMORANDUM

TIMN 298892

MEMORANDUM

Re: Kennedy Bill -- S. 1883

On November 15, 1989, Senator Kennedy introduced omnibus tobacco legislation (S. 1883) entitled "Tobacco Product Education and Health Protection Act of 1990." 135 Cong. Rec. S15, 722 (daily ed. Nov. 15, 1989).

SUMMARY

S. 1883 would add a new Title IX to the Public Health Service Act, creating a Center for Tobacco Products. The Center would be directed to regulate "tobacco additives" and to require public disclosure of such additives and "harmful" constituents of tobacco smoke; to study the effectiveness of the rotating health warnings and to undertake research to make them "more effective"; and to underwrite a broad range of antismoking education campaigns and other initiatives by private entities and state and local authorities, including antismoking campaigns in schools and workplaces. The bill would authorize \$185 million to carry out these activities in fiscal year 1991.

S. 1883 also would eliminate existing federal preemption of state and local regulation of cigarette advertising under the Federal Cigarette Labeling and Advertising Act with respect to advertising that is displayed solely within the geographical jurisdiction of the

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MINNESOTA TOBACCO LITIGATION

TIMN 298893

state or local government involved -- such as advertising on billboards and mass transportation facilities, point-of-sale advertising and, possibly, event sponsorship and other promotional activities. The antipreemption provision could be construed, conceivably, to permit state and local restrictions on cigarette marketing to adults in the name of protecting minors. While the provision does not appear to contemplate that state and local governments may impose any additional warning requirements, the language of the bill does not completely rule out arguments that such state and local action is allowed. S. 1883 would disavow any intent to preempt state tort law.

S. 1883 would declare a tobacco product to be "adulterated" if it contains "any additive or any substance that is considered to be poisonous or render [the product] significantly injurious to health." Sec. 952(3). Under the bill, "adulteration" would be a "prohibited act," subject to injunction proceedings, civil and criminal penalties and other remedies. Secs. 941-943. Senator Kennedy has not suggested that S. 1883 is intended to result in an outright ban on tobacco products, but tobacco is not excluded from the class of "substances" that could be deemed to make a tobacco product "adulterated" under the bill, thus triggering the bill's remedial provisions.

Finally, S. 1883 would replace the Surgeon General's carbon monoxide warning with an addiction warning.

DISCUSSION

1. **Center for Tobacco Products.** Sec. 3 of S. 1883 would add a new Title IX to the Public Health Service Act (42 U.S.C. § 296k *et seq.*). The bill specifies that nothing in the new title shall be construed to relieve any person from liability at common law or under State statutory law to any other person. Title IX, Subtitle D, Sec. 951(b)(2).

Subtitle A of Title IX (Secs. 901-903) is set forth in Sec. 3 of the bill. Sec. 901(a) would direct the Secretary of Health and Human Services to establish a Center for Tobacco Products within the Public Health Service, at the Centers for Disease Control. The Center would assume the functions and duties of the Interagency Committee on Smoking and Health. Sec. 903(b)(1).¹ An Office of Regulatory Affairs would be established in the Center to administer and enforce the act. Sec. 902(b)(2).

Under Subtitle A, the Center would be directed to "inform the public regarding constituents of, and additives

¹ At the same time -- no doubt inadvertently -- the bill would reestablish the Interagency Committee on Smoking and Health without altering its function or duties. Title IX, Subtitle B, ch. 5, Sec. 928(c). See pages 6-7 and note 5, below.

to, tobacco products," and to "restrict the use of additives that represent a significant health risk to the public." Sec. 901(b)(3) and (4).² The Center would be directed to investigate the additives contained in tobacco products to determine whether such additives "represent a significant added health risk to consumers of such products." Sec. 902(a)(1). The Center also would be directed to require the disclosure to the public of such additives, as well as information concerning "harmful tobacco smoke constituents," through labels or package inserts. Sec. 902(a)(1) and (2).³

The Center's responsibilities also would extend to public education, support of state minors laws, and review of the rotating health warnings. In particular, the Center would be directed to "provide assistance to States to enhance their efforts to enforce existing State laws concerning the sale of tobacco products within the State to minors." Sec. 901(a)(5). In addition, the Center would be directed to review the effectiveness of the current rotating

² "Constituent" would be defined as "any element of a tobacco product that is not an additive." Sec. 961(3). "Tobacco additive" would be defined to mean "any ingredient that is added to a tobacco product in the process of manufacturing or producing a tobacco product." Sec. 961(15).

³ Section 7(b) of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1335a(b), which specifies that ingredient information provided to the Secretary pursuant to Section 7(a) is to be treated as trade secret or confidential information, would be repealed. Sec. 10(a).

health warnings, and to undertake research directed toward improving the effectiveness of those warnings. Sec.

902(a)(3). Finally, the Center would be directed to prepare and distribute antismoking materials, including "paid advertising campaigns to inform targeted populations * * * of the health effects of using tobacco products." Sec. 903(a)(1) and (2). The Center would be responsible for "coordinating with film makers, broadcast media managers, and others regarding the impact of media on tobacco use behavior." Sec. 903(a)(3).

Subtitles B through D elaborate the mission of the Center.

Subtitle B, set forth in Secs. 3 and 5 of the bill, would provide for a variety of "anti-smoking programs." Chapter 1 of Subtitle B (Secs. 911-913) would direct the Center to make grants to public and private entities who would use the funds to conduct antismoking campaigns through public service announcements, paid advertising messages and "counter advertising." Sec. 911(b)(2). These campaigns would be directed at youth and "those in the groups of highest tobacco use." *Ibid.*⁴

⁴ See also, e.g., Sec. 912 (b)(B) (target audiences shall include "youth, school dropouts, minorities, blue collar workers, pregnant women, and low and no income individuals").

Chapter 2 of Subtitle B (Secs. 915-920) would direct the Center to make grants to states and political subdivisions of states to assist state and local efforts to prevent initial tobacco use by minors and encourage the cessation of tobacco use, especially by members of high-use groups. Sec. 915. States that enact and enforce laws prohibiting tobacco sales to minors and prohibiting cigarette vending machines except at locations where minors are not allowed would be rewarded with additional grants. Secs. 919 and 920.

Chapter 3 of Subtitle B (Secs. 921-925) would direct the Center to make grants to unions and other organizations to support activities, coordinated with employers, to "prevent the initiation, and encourage the cessation, of the use of tobacco products among workers and their families, especially those individuals with the highest prevalence of tobacco use." Sec. 921.

Chapters 4-6 of Subtitle B are set forth in Sec. 8 of the bill. Chapter 4 (Sec. 926) would direct the Secretary of Education to provide "incentive grants" to establish smoke-free schools. Sec. 926.

Chapter 5 (Secs. 927-929) would absorb Sec. 3 of the Comprehensive Smoking Education Act, 15 U.S.C. § 1341.⁵ That section directs the Secretary of Health and Human Services to "establish and carry out a program to inform the public of any dangers to human health presented by cigarette smoking," and establishes the Interagency Committee on Smoking and Health. Sec. 928. The Committee would be required to report biennially to Congress. Sec. 928(d). Chapter 5 also would absorb the corresponding provisions of the Comprehensive Smokeless Tobacco Health Education Act of 1986, 15 U.S.C. § 4401. Sec. 928(a) [sic]. The Secretary would be directed to report biennially to Congress on smokeless tobacco issues. Sec. 929.

Chapter 6 (Secs. 935-936) contains definitions and administrative provisions applicable to Subtitle B.

Subtitles C and D (Secs. 941-946, 951-957) -- which imitate provisions of the Federal Food, Drug & Cosmetic Act ("FD&C Act") -- are set forth in Sec. 8 of the bill. Subtitle D, the substantive subtitle, would forbid any person to manufacture, import, or package any tobacco product "unless such person has provided to the Center a

⁵ That apparently is the intent. The bill fails to repeal Sec. 3, but Sec. 9 of the bill, a technical provision, would repeal "Sec. 2" the Education Act. The reference to "Sec. 2" may be a typographical error, intended to refer to Sec. 3, since repealing Sec. 2 would serve no apparent purpose.

complete list of each tobacco additive used in the manufacture of each tobacco product brand name and the quantity of such additive." Sec. 953(a). The Secretary would be directed to prescribe by regulation tobacco additive disclosure requirements (by means of the label, package inserts or otherwise) and to order that the use of certain additives be reduced or eliminated altogether if the additive, "either by itself or in conjunction with any other additive, presents unnecessary increased risks to health." Sec. 953(b).

Subtitle D also would forbid any person to manufacture, import or package any tobacco product unless such person has provided the Center with "a complete list of all brands of such tobacco products that includes the levels of the tar, nicotine, carbon monoxide, and other constituents * * * for each brand." Sec. 954. In contrast to the warning requirements of the Federal Cigarette Labeling and Advertising Act and the Comprehensive Smokeless Tobacco Health Education Act, neither the additive provision nor the constituent provision of Title IX would be limited to tobacco products for distribution within the United States.

Under Subtitle D, a tobacco product would be considered to be "misbranded" if the manufacturer, importer, or packager of the product does not provide the Center with a

list of tobacco additives contained in the product by brand name for education of the public, or if the manufacturer, importer or distributor does not disclose to the public the "tar," nicotine, carbon monoxide and "harmful constituents" in the tobacco and tobacco smoke as required by the Center under Section 954. Sec. 951.

A tobacco product would be considered to be "adulterated" if --

(a) the level of any additive contained in the product is in violation of a requirement imposed by the Center under Sec. 953(b)(2);

(b) the nicotine, "tar," carbon monoxide or "other harmful constituent" level has not been "established" under Sec. 954;

(c) the product contains any additive or "any substance that is considered to be poisonous or render [the product] significantly injurious to health" (*cf.* FD&C Act, Sec. 402(a)(1), 21 U.S.C. § 342(a)(1));

(d) the product contains in whole or in part any filthy, putrid, or decomposed substance (*see* FD&C Act, Sec. 402(a)(3), 21 U.S.C. § 342(a)(3)); or

(e) the product has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered injurious to health (see FD&C Act, Sec. 402(a)(4), 21 U.S.C. § 342(a)(4)). Sec. 952.

Modeled on provisions of the FD&C Act, Subtitle C would define the "adulteration" or "misbranding" of tobacco products as "prohibited acts." Sec. 941(1). See FD&C Act, Sec. 301(b), 21 U.S.C. § 331(b). Authority would be provided comparable to that exercised by the Federal Food and Drug Administration, to bring actions in federal court to enjoin violations of the act, to seize violative products and to impose criminal penalties. Enforcement authority would be vested in the United States. Sec. 946. As noted earlier, tobacco is not excluded from the class of substances that could be deemed to make a tobacco product "adulterated" under the bill, thus triggering the bill's remedial provisions. If tobacco were to be deemed to be such an "adulterating" substance, the practical effect of S. 1883 would be to outlaw tobacco products.

Subtitle E (Secs. 961-962) is set forth in Sec. 8 of the bill. It sets forth definitions and other miscellaneous provisions.

2. **Preemption.** Sec. 955 of Subtitle D is entitled "Repeal of Federal Preemption on State Regulation of Local Advertisers." It would provide as follows:

"Nothing in this subtitle, section 5 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332, et seq.) or the Comprehensive Smokeless Tobacco Health Education Act (15 U.S.C. 4401 et seq.) shall prevent any State or local government from enacting additional restrictions on the advertising, promotion, sale or distribution of tobacco products to persons under the age of 18, or on the placement or location of advertising for tobacco products that is displayed solely within the geographic area governed by the applicable State or local government, such as advertising on billboards or on transportation vehicles, as long as the restrictions are consistent with and no less restrictive than the requirements of this subtitle and Federal law."⁶

Although the first part of Sec. 955 does not appear to give state and local jurisdictions any greater authority than they have already under the Federal Cigarette Labeling

⁶ For purposes of Title IX, "advertisement" would mean --

"(A) all newspaper and magazine advertisements and advertising inserts, billboards, posters, signs, decals, banners, matchbook advertising, point-of-purchase display material (except price information), and all other printed or other material used for promoting the sale or consumption of tobacco products to consumers; and

(B) any other means used to promote the purchase of tobacco products." Subtitle E, Sec. 961(1).

For purposes of Title IX, "promotion" would mean --

"any marketing communication method that informs, persuades or reminds consumers if a tobacco product or the attributes, image or brand name of such product or, [sic] motivates consumers to sample or try that product." Subtitle E, Sec. 961(11).

and Advertising Act, a state or local government might attempt to invoke that language to justify otherwise preempted measures as designed to prevent persons under 18 from starting to smoke or having access to tobacco products. Under the second part of Sec. 955, a state or local government could attempt to justify a total ban on cigarette advertising on billboards and mass transportation facilities, point-of-sale advertising and, possibly, event sponsorship and other promotional activities, based on smoking and health.

Sec. 955 does not purport to empower state or local authorities to promulgate additional health warning requirements. Nevertheless, a state or local government might attempt to justify such additional health warning requirements as a means of preventing the "advertising, promotion, sale, or distribution" of tobacco products to persons under 18 permitted by the first part of Sec. 955, and they also might attempt to invoke the second part of Sec. 955 to justify requiring additional warnings in "local" advertising media.

3. Addiction Warning. Section 10(b) of S. 1883 would replace the Surgeon General's carbon monoxide warning with the following addiction warning: "SURGEON GENERAL'S WARNING: Smoking is Addictive. Once you start you may not

be able to stop." Sec. 957 would provide that any product that contains nicotine but is not a tobacco product shall be considered to be a drug under Sec. 201(g)(1)(C) of the FD&C Act, 21 U.S.C. § 321(g)(c)(1). Under Secs. 6 and 7 of the bill, the Drug-Free Schools and Communities Act of 1986 and the Anti Drug Abuse Act of 1988 would be amended to cover tobacco products.

* * *

CURRENT LAWS

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MINNESOTA TOBACCO LITIGATION

TIMN 298906

Status of Current Laws

**Tobacco Product Education and Health
Protection Act of 1990
S.1883**

Amended or repealed statutes:

**The Public Health Service Act
(42 U.S.C. §§ 296k et seq.)**

**Comprehensive Smoking Education Act
(15 U.S.C. §§ 1331, 1341)**

**Drug-Free Schools and Communities Act of 1986
(20 U.S.C. §§ 3192-3, 3195-6, 3212, 3221)**

**Anti Drug Abuse Act of 1988
(20 U.S.C. §3172 note)**

**Federal Cigarette Labeling and Advertising Act
(15 U.S.C. §§ 1333(a), 1335a(b))**

**Comprehensive Smokeless Tobacco Health Education
Act of 1986 (15 U.S.C. §§ 4401, 4403-4, 4407)**

Statutes noted in legislation but not altered:

**Federal Food, Drug, and Cosmetic Act
(21 U.S.C. §321(g)(1)(c))**

Criminal Fine Enforcement Act of 1984

**Elementary and Secondary Education Act of 1965
(20 U.S.C. §3151 et seq.)**

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Amended or repealed statutes:

The Public Health Service Act
(42 U.S.C. §§ 296k et seq.)

Amendments/Repeals:

insert "after title VIII (42 U.S.C. §1 et seq.) the following new title:

'TITLE IX-CENTER FOR TOBACCO PRODUCTS'

'SUBTITLE A-CENTER FOR TOBACCO PRODUCTS'"

[pp. 6-10 (S. 1883)]

"Title IX of the Public Health Service Act(as added by section (3)) is amended by adding at the end thereof the following new subtitle:

'Subtitle B-Anti-Smoking Programs

Chapter 1-Public Information Campaigns'"

'see text of S. 1883 on pp. 11-29.

"Subtitle B of title IX of the Public Health Service Act (as added by section 5) is amended by adding at the end thereof the following:

'CHAPTER 4-TOBACCO USE AND EDUCATION'"

'see text of S. 1883 on pp. 32-64.

Comprehensive Smoking Education Act
(15 U.S.C. §§ 1331, 1341)

Amendments/Repeals:

(1) in paragraph (5) of § 1341, by striking out "and" after the semicolon.

(2) in paragraph (6) of § 1341, by striking out the period and inserting in lieu thereof ";and"; and

(3) by adding at the end of § 1341 the following new paragraph:

"(7) establish a comprehensive outreach program to inform individuals under the age of 18 about the health consequences of smoking."

[p. 10 (S. 1883)]

"Section 2 of the Comprehensive Smoking Education Act (15 U.S.C. § 1331) is repealed."

[pp. 64-65 (S. 1883)]

Drug-Free Schools and Communities Act of 1986
(20 U.S.C. §§ 3192-3, 3195-6, 3212, 3221)

Amendments/Repeals:

Section 5122(a)(1) of the Act, 20 U.S.C. § 3192(a)(1), is amended by striking "drug" and inserting "drug, tobacco".

Section 5123(b)(7) of the Act, 20 U.S.C. § 3193(b)(7), is amended by striking "drug" and inserting "drug, tobacco, and alcohol".

Section 5125 of the Act, 20 U.S.C. § 3195, is amended-

- (1) in subsection (a) by striking "drug and alcohol abuse prevention" and inserting "drug, tobacco, and alcohol abuse prevention";
- (2) in subsection (a)(9) by striking "drug" and inserting "drug, tobacco";
- (3) in subsection (a)(11) by striking "drug" and inserting "drug, tobacco"; and
- (4) in subsection (a)(12) by striking "drug" and inserting "drug, tobacco".

Section 5126(a)(2) of the Act, 20 U.S.C. § 3196(a)(2), is amended-

- (1) in subparagraph (B) by striking "drug" and inserting "drug, tobacco";
 - (2) in subparagraph (E) by-
 - (A) striking "applicants drug" and inserting "applicants drug, tobacco";
 - (B) striking "and" at the end of clause (i);
 - (C) inserting "and" at the end of clause (ii);
- and
- (D) inserting at the end thereof the following new clause (iii):
"(iii) how it will discourage the use of tobacco products by students;" and
 - (3) in subparagraph (I) by striking "conduct drug" and inserting "conduct drug, tobacco".

Section 5132(b) of the Act, 20 U.S.C. § 3212(b), is amended-

- (1) in paragraph (1) by inserting "and for dissemination pursuant to section 3 of the Comprehensive Smoking Education Act of 1984" at the end thereof; and
- (2) in paragraph (2) by striking "drug" and inserting "drug and tobacco".

Section 5141(b)(1) of the Act, 20 U.S.C. § 3221(b)(1) is amended by striking "alcohol" and inserting "alcohol and tobacco,".

[pp. 29-31 (S. 1883)]

Anti Drug Abuse Act of 1988
(20 U.S.C. §3172 note)

Amendments/Repeals:

Section 5051(i) of the Act, 20 U.S.C. § 3172 note, is amended-

(1) in paragraph (1)-

(A) by inserting ", including anti-tobacco education" after "program" in subparagraph (A);

(B) by inserting "or tobacco products" after "drugs" in subparagraph (C); and

(C) by inserting "and tobacco" after "drug" in subparagraph (D); and

(2) in paragraph (3), by inserting "and smoke-free" after "drug-free".

[p. 31 (S. 1883)]

Federal Cigarette Labeling and Advertising Act
(15 U.S.C. §§ 1333(a), 1335a(b))

Amendments/Repeals:

Section 7(b) of the Act(15 U.S.C. §1335a(b)) is amended by striking out paragraph (2).

Section 4(a) of the Act(15 U.S.C. §1333(a)) is amended by striking out "SURGEON GENERAL'S WARNING: Cigarette Smoke Contains Carbon Monoxide." each place such occurs in paragraphs (1), (2), and (3), and inserting in lieu thereof the following: "SURGEON GENERAL'S WARNING: Smoking Is Addictive. Once you start you may not be able to stop."

[p. 65 (S. 1883)]

**Comprehensive Smokeless Tobacco Health
Education Act of 1986**
(15 U.S.C. §§ 4401, 4403-4, 4407)

Amendments/Repeals:

Sections 2, 4, 5, and 8 of the Act (15 U.S.C.
§§ 4401, 4403, 4404, and 4407) are repealed.

[pp. 64-65 (S.1883)]

Statutes noted in legislation but not altered:

Federal Food, Drug, and Cosmetic Act
(21 U.S.C. §321(g)(1)(c))

Criminal Fine Enforcement Act of 1984

Elementary and Secondary Education Act of 1965
(20 U.S.C. § 3151 et seq.)

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TIMN 298912

TIMN 298913

Statement of Charles O. Whitley
on behalf of
The Tobacco Institute
before the
Committee on Labor and Human Resources
United States Senate
February 20, 1990

Mr. Chairman, distinguished members of the Committee and former colleagues from the other House. We appreciate this opportunity to testify on S. 1883, the "Tobacco Product Education and Health Protection Act of 1990."

S. 1883 would add a new Title IX to the Public Health Service Act, creating a Center for Tobacco Products.^{1/} This new agency, which would have powers and duties similar in some respects to those of the Food and Drug Administration, would be located within the Public Health Service at the Centers for Disease Control. S. 1883 would authorize \$185 million to carry out the activities of the Center and other antismoking programs under the bill in Fiscal Year 1991.

^{1/} The Public Health Service Act does not contain a "Title VIII." The Act refers to subchapters, not titles, and there is no subchapter VIII or VII. Presumably, the provisions designated as "Title IX" in S. 1883 would appear as subchapter VII of the Public Health Service Act.

Among other things, the Center would be directed to regulate "tobacco additives" and to inform the public of such additives and "harmful tobacco smoke constituents." The Center also would be directed to underwrite a broad range of antismoking initiatives by private entities and state and local authorities, including antismoking campaigns in schools and workplaces, and to "coordinat[e] with film makers, broadcast media managers and others regarding the impact of media on tobacco use behavior."

S. 1883 would permit state and local governments to regulate the placement or location of cigarette advertising that is displayed solely within the geographical jurisdiction of the state or local government involved. This would include advertising on billboards and mass transportation facilities, point-of-sale advertising and, possibly, event sponsorship and other promotional activities. In addition, S. 1883 would authorize state and local restrictions on the advertising, promotion, sale or distribution of cigarettes to persons under 18. Finally, S. 1883 would replace the Surgeon General's carbon monoxide warning with an "addiction" warning.

In addressing S. 1883, Mr. Chairman, I want to stress the common ground we share: The cigarette industry does not want young people to smoke. For more than 25 years, our industry has implemented a series of steps to discourage smoking by young people. We believe that smoking is for

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those adults who choose to smoke. Although some young people continue to smoke, I know of no other industry in America that has taken such direct, voluntary action to steer its products away from young people.

As early as 1964, the cigarette manufacturers adopted a Cigarette Advertising Code. Among other things, the Code prohibits cigarette advertising in publications directed primarily to persons under 21.^{2/} The manufacturers also subscribe to a Code of Sampling Practices prohibiting cigarette sampling to persons under 21 and imposing other stringent safeguards in this regard.^{3/} In 1969, the cigarette manufacturers offered voluntarily to stop advertising on television and radio. Cigarette advertising left the air in 1970 as a result of federal legislation giving effect to that proposal.^{4/}

In 1982, The Tobacco Institute launched a national advertising campaign that reached 110 million Americans. The message was, "Do cigarette companies want kids to smoke? No. As a matter of practice, No. As a matter of fact,

^{2/} See *Comprehensive Smoking Prevention Education Act: Hearings on H.R. 5653 and H.R. 4957 before the Subcomm. on Health and the Environment of the House Comm. on Energy and Commerce, 97th Cong., 2d Sess. 378 (1982) ("1982 Hearings")*.

^{3/} See *id.* at 379.

^{4/} Public Health Cigarette Smoking Act of 1969, § 6, Pub. L. No. 91-222, 84 Stat. 89 (codified at 15 U.S.C. § 1335).

No."^{5/} In 1984, as part of its Responsible Living Program, The Institute began offering a free guide book for parents, "Helping Youth Decide," prepared in conjunction with the National Association of State Boards of Education (NASBE). More than 700,000 copies of this guide and its sister publication, "Helping Youth Say No," have been distributed around the country. These booklets provide guidance on family communications to help youngsters develop decisionmaking skills needed to deal wisely with everyday choices and lifestyle decisions, such as smoking.^{6/}

In 1986, The Institute began providing unrestricted grants to NASBE for funding Community Alliance Programs (CAPS) at the rate of ten a year. Towns and cities throughout the country were invited to apply for the grants, which provide the impetus for a broad community-based effort to improve parent-youth interaction. This and other aspects of the Responsible Living Program are described in greater detail in testimony being presented today before the National Commission on Drug Free Schools by Jolly Ann Davidson, the

^{5/} *Smoking Prevention Health and Education Act of 1983: Hearings on S. 772 before the Senate Comm. on Labor and Human Resources, 98th Cong., 1st Sess. 204-12 (1983).*

^{6/} *See Advertising of Tobacco Products: Hearings before the Subcomm. on Health and the Environment of the House Comm. on Energy and Commerce, 99th Cong., 2d Sess. 685 (1986).*

educator, on behalf of The Tobacco Institute. A copy of that testimony is attached.

The newest in this series of industry efforts will commence next month. Recognizing the need to ensure that retailers are fully aware of the laws prohibiting the sale of cigarettes to minors, The Institute has undertaken a new, voluntary outreach program for retailers. This program, to be launched initially in Minnesota and Washington, and then in the other states, will be implemented by the appropriate retail associations in each state. The program includes brochures outlining the applicable minors law, a tip sheet on how to spot fake ID's, storefront door signs to let customers know immediately that the store does not sell tobacco to those not of legal age, and point-of-purchase display signs to remind customers and store employees of the law. We believe that this program will assist retailers in preventing the sale of cigarettes to persons below the minimum legal age.

In short, Mr. Chairman, the cigarette manufacturers do not encourage or condone smoking by young people. In fact, we have undertaken these programs over the past 25 years to help prevent young people from smoking. In this, we share common ground.

S. 1883, however, is ill-advised and should be rejected. It proposes regulation and spending as ends in themselves without any legitimate rationale. To the extent

that the bill seeks to reduce smoking by young people, it does so in a way that would trample on the rights of adults who choose to smoke and the industries, and the many thousands who are employed by them, that produce and market cigarettes for such adult smokers.

* S. 1883 would establish a new federal agency to investigate tobacco "additives" -- even though the safety of additives is already the responsibility of the Secretary of Health and Human Services under existing law and there has been no suggestion of health concerns based on the additive information supplied to the Secretary by the cigarette manufacturers to date.

* S. 1883 would require blanket disclosure of tobacco additives -- even though disclosure of tobacco additives to the Secretary of Health and Human Services is required by existing law and comparable additive information is exempt from public disclosure on trade secret or impracticality grounds under the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act.

* S. 1883 would require disclosure to the new agency of "tar," nicotine and carbon monoxide levels of tobacco products -- even though such information already is disclosed to the Federal Trade Commission and the public by voluntary agreement or on the request of the Commission. 2.

* S. 1883 would distribute \$50 million a year to antismoking groups for antitobacco advertising campaigns

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-- even though Americans are already universally aware of the claimed risks of smoking.

* S. 1883 would make \$50 million a year available for antismoking programs in schools and workplaces -- even though state and local governments are already pursuing such programs aggressively on their own.

* S. 1883 would require an "addiction" warning on cigarette packages and cigarette advertising -- even though one of every two smokers has quit, most of them without professional help, and even though calling smoking an "addiction" trivializes our nation's serious drug problem.

* S. 1883 would allow each state and local government to establish its own rules and regulations for the placement or location of cigarette advertising and promotion within its borders, inviting censorship in violation of the First Amendment and abandoning to that extent Congress's consistent 25-year policy of nationally uniform regulation of cigarette advertising.

* S. 1883 contains provisions that arguably could have the effect of undermining the uniformity of health warnings in cigarette packaging and labeling, a retreat from Congress' consistent 25-year policy of national uniformity and exclusive federal control in this area as well.

I will discuss these points in detail.

1. Center for Tobacco Products. Sec. 901(a) of the new title created by S. 1883 would direct the Secretary

of Health and Human Services to establish a Center for Tobacco Products within the Public Health Service, at the Centers for Disease Control. The Center would assume the functions and duties of the Interagency Committee on Smoking and Health. Sec. 903(b)(1).^{7/}

(a) Additives. Under Subtitle A of new Title IX, the Center would be directed to "inform the public regarding constituents of, and additives to, tobacco products," and to "restrict the use of additives that represent a significant health risk to the public." Sec. 901(b)(3) and (4).^{8/} The Center would be directed to investigate the additives contained in tobacco products and to determine whether such additives "represent a significant added health risk to consumers of such products." Sec. 902(a)(1). If the Center "determines that any tobacco additive, either by itself or in conjunction with any other additive, presents unnecessary

^{7/} At the same time -- no doubt inadvertently -- the bill would reestablish the Interagency Committee without altering its functions or duties and without repealing Sec. 3 of the Comprehensive Smoking Education Act (15 U.S.C. § 1341), which establishes the Interagency Committee. See Sec. 928(c). Sec. 4 of S. 1883 would add a new paragraph (7) to Sec. 3 of the Smoking Education Act but would not incorporate that new paragraph in Sec. 928(c), which otherwise reproduces Sec. 3 of the Act verbatim.

^{8/} "Constituent" would be defined as "any element of a tobacco product that is not an additive." Sec. 961(3). "Tobacco additive" would be defined to mean "any ingredient that is added to a tobacco product in the process of manufacturing or producing a tobacco product." Sec. 961(15).

increased risks to health," the Center would be authorized to prohibit the use of a tobacco additive or allow its use only at reduced levels. Sec. 953(b)(2).

The Center would be directed to require public disclosure, through labels or package inserts, of tobacco product additives and "harmful tobacco smoke constituents." Sec. 902(a)(1) and (2). Cigarette manufacturers would be required to provide to the Center "a complete list of each tobacco additive used in the manufacture of each tobacco product brand name and the quantity of such additive" (Secs. 953(a), 951(a)(1)), and "a complete list of all brands of such tobacco products that includes the levels of the tar, nicotine, carbon monoxide, and other constituent (as determined by the Center) for each brand as determined by the manufacturer" (Secs. 954, 951(a)(2)).

Mr. Chairman, many of these provisions substantially duplicate existing law. To the extent these provisions would change existing law, the change would serve no demonstrable policy objective. These provisions also would threaten public disclosure of commercially sensitive information that currently is protected from public disclosure as trade secret or confidential information. Such disclosure would produce no public benefit.

Under the Comprehensive Smoking Education Act, enacted in 1984, the cigarette manufacturers are required to provide the Secretary of Health and Human Services on an

annual basis "a list of the ingredients added to tobacco in the manufacture of cigarettes." 15 U.S.C. § 1335a(a). The list provided to the Secretary need not identify the company involved or the brand of cigarettes that contains the ingredients. *Ibid.* Congress considered the disclosure of cigarette ingredient information on this basis to be adequate to "permit the federal government to initiate the toxicologic research necessary to measure any health risk posed by the addition of additives and other ingredients to cigarettes during the manufacturing process." H.R. Rep. No. 305, 98th Cong., 2d Sess. 21 (1984).

The Secretary, in turn, is directed to transmit to Congress periodic reports advising Congress of any information pertaining to such ingredients "which in the judgement [sic] of the Secretary poses a health risk to cigarette smokers." *Id.* § 1335a(b)(1)(B). Each year since 1986, the six major cigarette manufacturers have jointly submitted ingredient lists to the Secretary as required by the 1984 legislation. The most recent list was submitted just this past December. In 1988, Surgeon General Koop indicated that the Department of Health and Human Services was actively reviewing the ingredient lists that had been submitted. There is no reason to believe that this existing review mechanism is inadequate and ~~needs~~ needs to be expanded or replaced.

Neither is there any justification for requiring public disclosure of tobacco additives. Because information

concerning the ingredients used to manufacture particular cigarette brands is competitively sensitive, Congress provided in the Comprehensive Smoking Education Act that the ingredient information supplied to the Secretary "shall be treated as trade secret or confidential information." Such information is exempt from disclosure under the Freedom of Information Act and criminal penalties are established for unauthorized disclosure. 15 U.S.C. § 1335a(b)(2)(A). The Act specifically requires the Secretary to establish "written procedures to assure the confidentiality of [such] information." *Id.* § 1335a(b)(2)(C). He has done so. See 50 Fed. Reg. 49,617 (1985).

In 1984, Congress considered and rejected public disclosure of ingredient information -- and for good reason. As originally introduced in the 97th Congress, the House version of the legislation ultimately enacted in 1984 would have required ingredients to be listed on cigarette packages.^{9/} Opposing such a requirement, The Tobacco Institute's witness explained:

"Cigarette manufacturers use a variety of ingredients to enhance flavor and appearance and preserve shelf life. These ingredients are among each manufacturer's most closely held trade secrets. There is no justification for denying cigarette manufacturers the trade secret protection

^{9/} H.R. 5653, 97th Cong., 2d Sess., p. 7 (March 1, 1982).

extended to every other consumer product industry."^{10/}

The Institute's witness also pointed out that requiring package disclosure of additives, "combined with the * * * health warnings and tar, nicotine and carbon monoxide numbers, would turn cigarette packages into little textbooks, likely causing smokers to ignore it all." *Ibid.*

Congress responded to these objections in the 1984 legislation by providing trade secret protection to the ingredient information supplied to the Secretary. In addition, it made clear that ingredient information was to be submitted to the Secretary in a manner that does not identify the company involved or the brand of cigarettes containing particular ingredients.

The considerations that supported Congress's decision to treat ingredient information in this way in 1984 remain valid today. Similar considerations are reflected in broad ingredient disclosure exemptions under the Federal Food, Drug and Cosmetic ("FD&C") Act and the Fair Packaging and Labeling ("FP&L") Act. Indeed, Mr. Chairman, it is fair to say that most tobacco additives would be exempt from disclosure under these laws and the implementing regulations of the Food and Drug Administration.

^{10/} 1982 Hearings, *supra* note 2, at 355.

(1) Food. Congress explicitly has exempted flavorings, colorings and spices used in food from disclosure under Sec. 403 of the FD&C Act, 21 U.S.C. § 343.^{11/} It requires the FDA, moreover, to establish further exemptions from disclosure for food ingredients "to the extent that [disclosure] is impractical, or results in deception or unfair competition." *Ibid.* See, e.g., 21 C.F.R. § 101.100(a)(3) (1988) (exempting "incidental additives," including "processing aids," from disclosure).

(2) Cosmetics. The FDA, exercising its authority under Sec. 5(c)(3) of the FP&L Act, 15 U.S.C. § 1454(c)(3), likewise has exempted from disclosure the ingredients of flavors and fragrances used in cosmetics. 21 C.F.R. § 701.3(a) (1989). The FDA explained that these were "the two types of cosmetic ingredients which would be the most likely of any to create trade secret issues." 38 Fed. Reg. 28,912 (1973). The FDA also noted that disclosure of such ingredients "would be impractical." *Id.* at 28,913. See,

^{11/} Sec. 403(g)(2) requires the label of any food for which a "standard of identity" has been prescribed by regulation to list, insofar as may be required by regulation, "the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food." Sec. 403(i)(2) requires the label of any food fabricated from two or more ingredients, for which a standard of identity has not been prescribed, to list "the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each."

e.g., 21 C.F.R. § 701.3(1)(2) (1989) (exempting "incidental ingredients," including "processing aids," from disclosure). The FDA concluded that it would not be impractical to disclose by name colors used in cosmetics but the agency carefully provided that a color whose identity is a trade secret may be exempted from disclosure. 38 Fed. Reg. 28,913 (1973). The FDA has recognized, generally, that Sec. 5(c)(3) of the FP&L Act does not authorize it to promulgate ingredient labeling regulations that require the divulging of trade secrets. *Id.* at 28,912. See 21 C.F.R. § 720.8 (1988) (specifying procedure for exempting ingredients from public disclosure on trade secret grounds).

(3) Drugs. Sec. 502(e)(1) of the FD&C Act, which addresses disclosure of ingredients used to manufacture drugs, does not require disclosure of "inactive ingredients." See 21 U.S.C. § 352(e)(1). Such ingredients typically include binders, flavors, colors, preservatives and fillers. The FD&C Act requires the FDA to establish further exemptions from disclosure for active ingredients "to the extent that [disclosure] is impractical." *Ibid.*

Most of the ingredients added to tobacco in the manufacture of cigarettes are flavorings and fragrances. Such ingredients would be exempt from disclosure under Sec. 403 of the FD&C Act and Sec. 5(c)(3) of the FP&L Act or otherwise would qualify for exemption from disclosure on trade secret or impracticality grounds.

Mr. Chairman, you have been quoted as suggesting that cigarette manufacturers should be required to disclose tobacco additives because "Nabisco [must] provide the ingredients to Oreo cookies."^{12/} However, Nabisco is not required to disclose the flavorings, colorings and spices used in Oreos and is entitled to seek disclosure exemptions for other ingredients on trade secret or impracticality grounds. When you stated that "it is time to stop permitting the industry to treat additives to tobacco as trade secrets,"^{13/} you were asking, in effect, to apply to tobacco products a standard *different* in all relevant respects from the standard applied to foods, cosmetics and drugs.^{14/}

^{12/} *Chicago Tribune*, Nov. 16, 1989, p. 5.

^{13/} 135 Cong. Rec. S15,723 (daily ed. Nov. 15, 1989).

^{14/} Although S. 1883 would repeal Sec. 7(b)(2) of the Federal Cigarette Labeling and Advertising Act, which treats ingredient information as trade secret or confidential information and prohibits the unauthorized disclosure of such information, the bill does not purport to repeal Sec. 7(a), which requires cigarette manufacturers to provide the Secretary annually with ingredient lists that do not "identify the company which uses the ingredients or the brand of cigarettes which contain the ingredients." Thus, cigarette manufacturers conceivably would continue to be required to provide one ingredient list (which does not disclose brand or manufacturer information) to the Secretary pursuant to Sec. 7(a) of the Labeling Act, and would be required to provide another list (which would disclose such information) to the Center under Sec. 953(a) of the new Title IX created by S. 1883.

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TIMN 298928

(b) **Constituents.** As in the case of tobacco additives, the provisions concerning tobacco smoke "constituents" are redundant. Pursuant to a voluntary agreement and program entered into with the Federal Trade Commission, the major cigarette manufacturers already disclose in their advertising "tar" and nicotine ratings for the advertised brands.^{15/} The Commission also publishes carbon monoxide ratings on a brand-by-brand basis, supplied by the cigarette manufacturers at the Commission's request.^{16/} The Tobacco Institute Testing Laboratory (TITL), monitored closely by an on-site representative of the Commission, measures the "tar," nicotine and carbon monoxide levels of cigarettes sold in the United States.

The Commission has told the House Subcommittee on Transportation, Tourism, and Hazardous Materials that it is satisfied that its current arrangement with TITL enables it to ensure the accuracy of the "tar," nicotine and carbon

^{15/} See Letter of October 23, 1970, to Federal Trade Commission from Brown & Williamson Tobacco Corporation, Larus & Brother Company, Inc., Liggett & Myers Incorporated, Lorillard, Philip Morris U.S.A., R.J. Reynolds Tobacco Company, Stephano Brothers and United States Tobacco Company.

^{16/} See, e.g., Federal Trade Commission, *Report of Tar, Nicotine and Carbon Monoxide Content of 272 Varieties of Domestic Cigarettes*, 54 Fed. Reg. 1787 (Jan. 17, 1989).

monoxide figures supplied by the cigarette manufacturers.^{17/} With respect to any other "constituents" of tobacco smoke, a representative of the Oak Ridge National Laboratory (ORNL) told the same Subcommittee in 1988, based on research conducted by ORNL, that testing for other constituents would not affect the relative ranking of cigarettes as determined by "tar" and nicotine or provide information that enable smokers to choose more rationally between different brands of cigarettes.^{18/}

There is no reason to enact legislation requiring further disclosure of tobacco smoke "constituents," for shifting responsibility for overseeing such disclosure to a new federal agency or for incurring the substantial additional costs that such further oversight would entail.

^{17/} *FTC Nicotine Program: Hearing before the Subcomm. on Transportation, Tourism, and Hazardous Materials of the House Comm. on Energy and Commerce, 100th Cong., 1st Sess. 5-6 (1987) (statement of the Federal Trade Commission); id. at 10-11, 47 (testimony of William C. MacCleod, Director, Bureau of Consumer Protection, FTC); id. at 13, 47 (testimony of Daniel Oliver, Chairman, FTC).*

^{18/} *Cigarettes -- Advertising, Testing, and Liability: Hearings on H.R. 4543 before the Subcomm. on Transportation, Tourism, and Hazardous Materials of the House Comm. on Energy and Commerce, 100th Cong., 2d Sess. 204 (1988) ("1988 Hearings") (statement of Michael D. Guerin). Dr. Guerin testified that the potential additional constituents of tobacco smoke are not, per se, harmful compounds. Id. at 211.*

(c) Antismoking campaigns. The Center would be directed to prepare and distribute antismoking materials, including "paid advertising campaigns to inform targeted populations * * * of the health effects of using tobacco products." Sec. 903(a)(1) and (2). Secs. 911-913 would direct the Center to make grants to public and private entities that would use the funds to conduct antismoking campaigns through public service announcements, paid advertising messages and "counter advertising." Sec. 911(b)(2). The Center also would be responsible for "coordinating with film makers, broadcast media managers, and others regarding the impact of media on tobacco use behavior." Sec. 903(a)(3).

Mr. Chairman, these provisions of S. 1883 appear to be based on the mistaken premise that Americans need to be informed of the claimed health risks of smoking. In fact, as one authority told a House subcommittee not long ago, "the level of public awareness on smoking and health issues is virtually unprecedented in our national experience."^{19/} More Americans are aware of the allegations with respect to smoking and health than can identify George Washington or know when our Nation declared its independence. More Americans are aware of those allegations than recognize

^{19/} See 1988 Hearings, *supra* note 18, at 443 (statement of Gerald M. Goldhaber, Chairman, Department of Communications, State University of New York (Buffalo)).

the name of Lee Harvey Oswald or understand a reference to Watergate. Nearly every American believes smoking is harmful but only 1 of 3 Americans knows who delivered the Sermon on the Mount.^{20/}

Young people, especially, are aware of the risks attributed to smoking. As the Surgeon General has stated, "[b]y the time they reach seventh grade, the vast majority of children believe smoking is dangerous to one's health."^{21/} Of 895 children and adolescents questioned in a recent survey, over 98 percent said they believed smoking is harmful and "accurately named one or more body parts that are adversely affected by smoking."^{22/} Young people start to smoke not because they are unaware of the health claims concerning smoking or because of cigarette advertising. The only significant influences on smoking by young people are family and peers, and these influences have been shown to be both powerful and direct.^{23/}

^{20/} *Id.* at 442.

^{21/} Smoking and Health: A Report of the Surgeon General, p. 17-10 (1979).

^{22/} Leventhal, et al., "Is the Smoking Decision an 'Informed Choice'?", *JAMA*, vol. 257, pp. 3373-76 (1987).

^{23/} See, e.g., *Smoking Prevention Act: Hearings on H.R. 1824 before the Subcomm. on Health and the Environment of the House Comm. on Energy and Commerce*, 98th Cong., 1st Sess. 53 (1983) (statement of Mortimer B. Lipsett, M.D.,

(footnote cont'd)

When the antitobacco lobby complains that government spends "too little" on disseminating the antismoking message, it conveniently overlooks the value of the "free media" that the antismoking message receives daily. Yet the Advocacy Institute -- a prominent arm of the antitobacco lobby -- has noted "the vast outpouring of media attention to smoking," and has commented that, "[b]y standards which apply to most running stories, coverage of smoking has enjoyed an extraordinary run in the media."^{24/} It would seem profli- gate, to say the least, in the face of the federal budget deficit, for Congress to authorize an additional \$50 million to promote a message that Americans already understand and believe and that is reinforced continually and pervasively by the news media.

I should add, in this connection, that we view with particular concern the provision of S. 1883 directing the Center to "coordinat[e] with film makers, broadcast

(footnote cont'd)

Director, National Institute of Child Health and Human Development) ("The most forceful determinants of smoking [by young people] are parents, peers, and older siblings."); Aaro, Wold, Kannas & Rimpella, "Health Behaviour in School- children: A WHO Cross-National Survey," *Health Promotion*, vol. 1, no. 1, pp. 17, 21 (May 1986) ("When young people start smoking, the most important predictor is the smoking behaviour and smoking-related activities of 'significant others'").

^{24/} *Media Strategies for Smoking Control -- Guidelines*, p. 9 (Jan. 14-15, 1988).

media managers, and others regarding the impact of media on tobacco use behavior." Sec. 903(a)(3). It is not appropriate for government to tell artists, writers and others in the media how to portray smoking or smokers in their work, or to suggest that some portrayals are more politically "correct" than others. It is one thing for government officials to speak out on an issue but quite another for the government to "prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion."^{25/} Action by the Center pursuant to Sec. 903(a)(3) would chill expression protected by the First Amendment -- effectively imposing a system of prior restraints on speech deemed to be not "unfriendly" enough to smoking.

(d) State programs. The Center would be directed to "provide assistance to States to enhance their efforts to enforce existing State laws concerning the sale of tobacco products within the State to minors." Sec. 901(b)(5). Secs. 915-920 would direct the Center to make grants to states and political subdivisions of states to assist state and local efforts to prevent initial tobacco use by minors and encourage the cessation of tobacco use, especially by members of high-use groups. Sec. 915. States that enact

^{25/} *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943).

and enforce laws prohibiting tobacco sales to minors and prohibiting cigarette vending machines except at locations where minors are not allowed would be rewarded with additional grants. Secs. 919 and 920.

Mr. Chairman, no one can seriously suggest that state and local governments need additional federal encouragement in this area. During this decade, many state and local jurisdictions have enacted laws restricting smoking in public places and workplaces and implementing other antismoking measures. In his 1986 report, the Surgeon General referred to "a wave of social action regulating tobacco smoking in public places."^{26/} Most recently, the Surgeon General's 1989 report stated:

"Since the 1986 Report, the pace of action appears to have increased in both the public and private sectors. Restrictions on smoking in public places are the result of government actions at the Federal, State, and local levels, particularly state and local legislation."^{27/}

In short, this is not a case in which Congress must bribe or coerce the states into pursuing federal policy.

(e) Other programs. Secs. 921-925 would direct the Center to make grants to unions and other organizations

^{26/} *The Health Consequences of Involuntary Smoking: A Report of the Surgeon General*, p. 263 (1986).

^{27/} *Reducing the Health Consequences of Smoking: A Report of the Surgeon General*, p. 552 (1989).

to support activities, coordinated with employers, to "prevent the initiation, and encourage the cessation, of the use of tobacco products among workers and their families, especially those individuals with the highest prevalence of tobacco use." Sec. 922. The bill also would direct the Secretary of Education to provide "incentive grants" to establish smoke-free schools. Sec. 926. With respect, we submit that additional federal spending is not required to stimulate antismoking activity in these areas.

2. State and Local Regulation of Cigarette Advertising and Promotion. Sec. 955 is entitled "Repeal of Federal Preemption on State Regulation of Local Advertisers." It would provide as follows:

"Nothing in this subtitle, section 5 of the Federal Cigarette Labeling and Advertising Act * * * or the Comprehensive Smokeless Tobacco Health Education Act * * * shall prevent any State or local government from enacting additional restrictions on the advertising, promotion, sale or distribution of tobacco products to persons under the age of 18, or on the placement or location of advertising for tobacco products that is displayed solely within the geographic area governed by the applicable State or local government, such as advertising on billboards or on transportation vehicles, as long as the restrictions are consistent with and no less restrictive than the requirements of this subtitle and Federal law."28/

28/ For purposes of Title IX, "advertisement" would mean --

(footnote cont'd)

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The first part of Sec. 955 likely would be invoked by antismoking advocates at the state and local levels in an attempt to justify sweeping restrictions on the advertising, promotion, sale and distribution of tobacco products in the name of reducing smoking by young people. Authorizing state and local governments to impose such restrictions on such a basis could result in an end run around Congress' consistent policy of national uniformity in this area. Moreover, by arguably licensing state and local measures that would render cigarette advertising and perhaps cigarettes themselves invisible to young people, this part of Sec. 955 would fly in the face of the Supreme Court's repeated admonition that

(footnote cont'd)

"(A) all newspaper and magazine advertisements and advertising inserts, billboards, posters, signs, decals, banners, matchbook advertising, point-of-purchase display material (except price information), and all other printed or other material used for promoting the sale or consumption of tobacco products to consumers; and

(B) any other means used to promote the purchase of tobacco products." Subtitle E, Sec. 961(1).

For purposes of Title IX, "promotion" would mean --

"any marketing communication method that informs, persuades or reminds consumers of a tobacco product or the attributes, image or brand name of such product or, [sic] motivates consumers to sample or try that product." Subtitle E, Sec. 961(11).

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"the government may not 'reduce the adult population * * * to reading only what is [deemed] fit for children.'"^{29/}

The second part of Sec. 955 -- authorizing state and local restrictions on the placement or location of advertising displayed solely within the jurisdiction involved -- would Balkanize regulation of the advertising and promotion of a nationally marketed product. Such an outcome would be seriously at odds with First Amendment values. In addition, antismoking advocates undoubtedly would attempt to use S. 1883 to justify prohibitive state and local advertising requirements, or even outright bans. For all of these reasons, similar legislation in the House has been opposed in the last two Congresses by the American Civil Liberties Union, the Washington Legal Foundation, the Freedom To Advertise Coalition, the Association of National Advertisers and the American Association of Advertising Agencies, among others.^{30/} We

29/ *Bolger v. Youngs Drug Product Corp.*, 463 U.S. 60, 73 (1983) (quoting *Butler v. Michigan*, 352 U.S. 380, 383 (1957) (invalidating statute that prohibited reading materials deemed inappropriate for children)). See also *Health Protection Act of 1987: Hearing on H.R. 1272 and H.R. 1532 before the Subcomm. on Transportation, Tourism & Hazardous Materials of the House Comm. on Energy and Commerce*, 100th Cong., 1st Sess. 99 (1987) (testimony of Professor Burt Neuborne, New York University Law School).

30/ *Tobacco Issues (Part 1): Hearing on H.R. 1250 before the Subcomm. on Transportation and Hazardous Materials of the House Comm. on Energy and Commerce*, 101st Cong., 1st Sess. (1989); 1988 Hearings, *supra* note 18.

oppose this provision of S. 1883 for the same reasons. There is no reason to abandon Congress's consistent 25-year policy of national uniformity in this field.

Although probably not its intent, S. 1883 also could threaten the existing system of national uniformity in health warnings in cigarette labeling and advertising. Sec. 951(b)(1) would provide as follows:

"Additional Information. Nothing in this title[,] the Federal Cigarette Labeling and Advertising Act * * *, or the Comprehensive Smokeless Tobacco Health Education Act of 1986 * * * shall prohibit a manufacturer of tobacco products from providing consumers with information concerning tobacco product constituents, tobacco smoke, and the adverse effects of tobacco use in addition to the information that such manufacturers are required to provide pursuant to this chapter and the Federal Cigarette Labeling and Advertising Act * * * and the Comprehensive Smokeless Tobacco Health Education Act of 1986 * * *."

Another provision of the bill could have a similar effect. Sec. 9(a) -- which is denominated a "technical amendment" -- purports to repeal "Section 2 of the Comprehensive Smoking Education Act (15 U.S.C. 1331)." This provision is ambiguous because Sec. 2 of the Smoking Education Act is not codified as Sec. 1331 of Title 15 but as a note to Sec. 1331. Sec. 1331 is the provision of the Federal Cigarette Labeling and Advertising Act that affirms national uniformity and protection of commerce and the national economy as central policies of Congress in regulating cigarette labeling and advertising. Sec. 1331 note, on the other hand, sets out

the purpose of the Smoking Education Act. If Sec. 9(a) of S. 1883 is intended to repeal Sec. 1331 of Title 15, rather than the note to Sec. 1331, it would be no mere "technical amendment."^{31/}

3. An "Addiction" Warning. Section 10(b) of S. 1883 would replace the Surgeon General's carbon monoxide warning with the following warning: "SURGEON GENERAL'S WARNING: Smoking is Addictive. Once you start you may not be able to stop."

Mr. Chairman, this issue was the subject of a hearing in 1988 before the House Subcommittee on Health and the Environment. At that hearing, we testified against an addiction warning on the ground that calling cigarette smoking an "addiction" trivializes, and almost mocks, the serious narcotic and other hard drug problems faced by our society and undermines efforts to combat drug abuse.^{32/} In

^{31/} S. 1883 also could affect tobacco product liability litigation by virtue of the purported "findings" set forth in Sec. 2, most of which we vigorously dispute. Such findings were deliberately deleted from the Comprehensive Smoking Education Act so as to avoid that result. See 130 Cong. Rec. 26,954-55 (1984) (statement of Sen. Ford). See also *id.* at 26,953 (statement of Sen. Gorton); *id.* at 27,333 (statement of Rep. Gore).

^{32/} Secs. 6 and 7 of S. 1883, which would amend the Drug-Free Schools and Communities Act of 1986 and the Anti Drug Abuse Act of 1988 to cover tobacco products, suffers from the same defect. These provisions of S. 1883 would divert the limited funds appropriated under these acts to

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addition, we noted that the "addiction" claim with respect to smoking is without medical or scientific foundation, notwithstanding the comments of former Surgeon General Koop. Such a claim defies all logic when, according to the Surgeon General, nearly half of all Americans who ever smoked have quit,^{33/} and most of the 41 million smokers who quit did so without formal treatment programs or smoking cessation devices.^{34/} Ironically, the presence of an "addiction" warning could serve to discourage some smokers from quitting.

Rather than repeat my testimony from that hearing, I respectfully request that my testimony, and the supporting testimony of Dr. Stephen M. Raffle and Dr. Theodore H. Blau, be included in the record of this hearing.^{35/}

* * *

(footnote cont'd)

antitobacco programs without appropriating any additional funds for such programs.

^{33/} 1989 Report, *supra* note 27, at 292.

^{34/} *The Health Consequences of Smoking -- Nicotine Addiction: A Report of the Surgeon General*, p. 466 (1988). See also *id.* at 577, 580-81 (trends in quitting activity).

^{35/} *Health Consequences of Smoking -- Nicotine Addiction: Hearing before the Subcomm. on Health and the Environment of the House Comm. on Energy and Commerce, 100th Cong., 2d Sess. 299-39* (1988).

At some point, Mr. Chairman, any industry faced with the prospect of still further regulation is entitled to say "enough." We clearly have reached that point with the regulation of tobacco products. S. 1883, which proposes regulation that is not needed and spending the federal government can ill afford, should be rejected.

I would be glad to answer any questions.

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The Case Against S. 1883
THE TOBACCO PRODUCT EDUCATION
AND HEALTH PROTECTION ACT OF 1990:
Is This Legislation Necessary?

Senator Edward M. Kennedy (D-Mass.), calling for "a new national effort to reduce smoking and tobacco use in our society," has introduced the Tobacco Product Education and Health Protection Act of 1990 (S. 1883).

"The purpose of the legislation," he says, "is to help people stop smoking before they start and to assist smokers who wish to stop."

Its cost: \$185 million in FY 1991, and "such sums as may be required" in the following two fiscal years.

Before considering the details of S. 1883, let's consider whether a new national tobacco policy is necessary.

Twenty-five years ago, Congress established a national policy regarding tobacco to inform the American people about claims concerning smoking and health so as to insure that the decision to smoke or not is an informed one.

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Apparently, the policy of informed individual choice is working. Since 1965 --

- o Tobacco use has declined dramatically. The prevalence of smoking by adults has dropped from 40 per cent to 29 per cent. (Source: 1989 Surgeon General's Report.)
- o Between 1965 and 1985 some 41 million people have given up smoking; nine out of ten did it alone, without outside help. (Source: 1988 Surgeon General's Report.)
- o In 1985, the group of ex-smokers outnumbered people who smoked more than 25 cigarettes a day by a three-to-one margin. (Source: 1988 U.S. Statistical Abstract.)

IF REDUCING SMOKING IS THE GOAL, CURRENT POLICY IS WORKING. S. 1883 IS UNNECESSARY -- ESPECIALLY WHEN THE BILL CARRIES A FIRST YEAR PRICE TAG OF NEARLY \$200 MILLION ... FUNDS THAT COULD BE USED INSTEAD FOR OTHER FEDERAL PROGRAMS SUFFERING SEVERE GRAMM-RUDMAN BUDGETARY CONSTRAINTS.

If there's a serious question about the need for passage of this bill in general, the details of S. 1883 raise similar questions. For example:

1. The legislation mandates a national anti-tobacco campaign against tobacco use by minors, blue collar workers, minorities and other groups that would include the use of paid advertising at a cost of \$50 million a year.

**WHY SPEND ADDITIONAL MILLIONS OF FEDERAL FUNDS FOR
PAID ADVERTISING OF A MESSAGE THAT AMERICANS HAVE
BEEN AWARE OF FOR DECADES?**

Survey research has established that 99 per cent of the American population is aware of what the Surgeon General and others have to say about the health effects of smoking (compared to only 89 per cent who know the name of our first president.) In 1985, a survey done by HHS showed not only had the American public heard that cigarette smoking posed a health threat, but 95% believed that cigarette smoking increased the risk of lung cancer; 92% believed it increased the risk of emphysema and 91% believed it increased the risk of heart disease. To assert that the anti-smoking message has not been seen, heard and understood borders on the absurd. Taxpayers'

money can and should be better allocated to more pressing social problems.

2. S. 1883 groups tobacco along with hard drugs in the Drug-Free Schools and Communities Act of 1986 and authorizes \$25 million in grants for this program. It would also replace the carbon monoxide warning with an addiction label.

**SENDING OUT THE MESSAGE THAT "TOBACCO USE EQUALS
DRUG ABUSE" ONLY SERVES TO CONFUSE -- AND TRIVIALIZE
-- THE DRUG ISSUE, ESPECIALLY TO YOUNG PEOPLE.**

Former Surgeon General Koop has equated tobacco use with hard drug use. But what's the message? "Illegal drugs should be legalized?" Or "Legal products, like tobacco and alcohol, should be outlawed?"

Equating cigarettes with crack cocaine trivializes a major social problem. It's counter-productive to our national drug control program. When the Senate passed legislation implementing the President's 1989 National Drug Control Strategy, it did not have tobacco or cigarette smoking in mind when it said:

[T]he term "addiction" means the state of an individual where that individual habitually uses an illegal drug in a manner that endangers the public morals, health, safety, or welfare, or who is so addicted to the use of illegal drugs that such individual loses the power of self-control with reference to such individuals' addiction. (Section 529(B) of S.1711, by Senator Dole)

3. S. 1883 would create a new bureaucracy under the Secretary of Health and Human Services (HHS). In addition to managing the \$50 million campaign, discussed above, the new HHS bureaucracy would be empowered to make available --
 - o \$50 million in grants to state and local governments, encouraging them to enact and enforce laws to harass retailers in the name of preventing tobacco sales to minors.
 - o \$5 million in grants to unions, encouraging them to control smoking in workplaces.

- o \$5 million to health departments, encouraging them to develop smoking cessation programs.

PAYING STATES, CITIES, AND COUNTIES TO ENACT AND ENFORCE LAWS PROHIBITING TOBACCO SALES AND PREVENTING SMOKING, OR PROMOTING SMOKING BANS IN THE WORKPLACE MAKES A MOCKERY OF FEDERALISM.

The proposal is a retreat from the present national policy of free and informed choice in the market place to a policy of coercive control over where cigarettes may be purchased or consumed. It conceals the federal prohibitionist hand inside the glove of state and local action.

4. S. 1883 would empower the new agency to require disclosure of tobacco constituents and additives and to ban the use thereof under some circumstances, authorizing another \$50 million for FY 1991.

HHS SPENT \$40.5 MILLION ON SMOKING CONTROL PROGRAMS IN FY 1987. CLEARLY, THE COUNTRY DOESN'T NEED YET ANOTHER LAYER OF FEDERAL BUREAUCRACY TO DUPLICATE

**ACTIVITIES NOW HANDLED BY THE DEPARTMENT OF HEALTH
AND HUMAN SERVICES AT LESS COST.**

Under current law, additives are the responsibility of the Secretary of HHS. Each year, cigarette manufacturers submit a list of ingredients added to cigarettes. HHS can recommend to Congress action which should be taken with respect to such ingredients. HHS properly treats this information as trade secrets, protected like those of other manufacturers. S. 1883 violates the principle of trade secrets.

5. S. 1883 would largely eliminate existing federal preemption of state and local regulation of cigarette advertising displayed within such jurisdictions.

THIS IS THE BACK DOOR ROUTE TO A BAN ON CIGARETTE
ADVERTISING AND PROMOTION. A PROLIFERATION OF LOCAL
AND STATE RESTRICTIONS WOULD MAKE IT DIFFICULT IF
NOT IMPOSSIBLE FOR TOBACCO COMPANIES TO EXERCISE
THEIR RIGHT TO FREE COMMERCIAL SPEECH UNDER THE
FIRST AMENDMENT.

With enactment of the Federal Cigarette Labeling and
Advertising Act in 1965 and in subsequent legislation
enacted in 1969 and 1984, Congress has recognized the
need to avoid a tangle of diverse and confusing labeling
and advertising regulations. The proposed bill would
overturn 25 years of a federal policy of national
uniformity.

The proposed legislation also ignores the
substantial constitutional concerns involved in mandating
compliance with a patchwork of conflicting state and
local advertising regulations.

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TIMN 298952

TIMN 298953

Opening Statement - S. 1883

Counter-Advertising

More than 25 years have passed since the first report on smoking was released by then Surgeon General Luther Terry. Tobacco use in this country has declined considerably. The prevalence of smoking by adults has dropped from 40 percent to 29 percent, according to the Surgeon General's 1989 report.

As former Surgeon General, C. Everett Koop told The New York Times in 1985, "The smoker today is well-educated about the health hazards of smoking."

Why then, especially in an era of scarce resources, should we appropriate \$50 million in taxpayer funds for advertising campaigns that do not address any real need?

It is simply a fallacy to assume that Americans are not exposed to a substantial amount of anti-tobacco advertising. Consider the major anti-tobacco education campaigns developed by organizations such as the American Cancer Society, American Lung Association and the American Heart Association. The Great American Smokeout, begun more than 10 years ago, has generated enormous publicity at the local, state and national level.

Print media has been extremely generous in its news coverage devoted to tobacco and anti-tobacco activities and information. One research firm made an intensive effort to estimate the quantity of such news coverage. It was able to collect a total of nearly 71,000 separate news clippings that had appeared in 1988. Of this very large number, more than seven of every ten contained negative references to tobacco and tobacco products.

Broadcast media regularly provide public service announcements (PSAs) against tobacco use, again worth millions of dollars in airtime. For example, PSAs produced by the U.S. Department of Health and Human Services (HHS) alone were given nearly \$3 million worth of free airtime from August 1988 to July 1989. According to a National Association of Broadcasters 1984 survey, more than 97 percent of television stations carried anti-smoking PSAs. These PSAs are seen again and again by millions of American households.

In addition, more than 80 percent of television stations carried smoking-related news stories, and 62 percent devoted airtime to smoking-related public affairs shows.

Then, too, there was an estimated \$14.3 million spent in 1988 for advertising by companies in the smoke cessation business. Now, add to that the \$40.6 million HHS spent in fiscal year 1987 on smoking control programs. That's quite a budget. In addition 26 states have smoking education programs totalling nearly \$300 million; California runs the largest program by far.

As the Advocacy Institute -- a prominent arm of the anti-tobacco lobby -- has noted "the vast outpouring of media attention to smoking" and has commented that, "[b]y standards which apply to most running stories, coverage of smoking has enjoyed an extraordinary run in the media."

In large part, the information distributed to the public explains why an independent opinion poll showed that 99 percent of the American people is aware of the message that cigarette smoking is dangerous. A 1985 survey done by HHS showed not only had the American public heard that cigarette smoking posed a health threat, but 95 percent believed that cigarette smoking increased the risk of lung cancer; 92 percent believed it increased the risk of emphysema; and 91 percent believed it increased the risk of heart disease.

Of course, there are many Americans who continue to smoke. Nearly all of us have friends, neighbors and co-workers who smoke. But, we must ask ourselves, do they smoke because they are uninformed or because they know the claims and they are exercising their right to choose. The facts about public awareness show the latter is true.

Issue Brief - S. 1883

Counter Advertising

S. 1883 would create a Center for Tobacco Products Control and Education. Among other things, the Center would be directed to underwrite a broad range of antismoking initiatives by private entities and state and local authorities, including anti-smoking campaigns and "coordination with film makers, broadcast media managers and others regarding the media on tobacco use and behavior."

S. 1883 would appropriate \$50 million, out of a total budget of \$185 million, toward a national anti-tobacco advertising campaign. Grants would be provided to develop public service announcements and other counter-advertising.

But before the government launches another costly program to deter or stop tobacco use, lawmakers should evaluate the hundreds of anti-smoking advertising and educational campaigns provided by the government and the private sector. They have generated virtually universal public awareness of anti-tobacco arguments and decreased consumption rates. Consider:

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- o Each year, millions of Americans participate in the Great American Smokeout, an event that generates a tremendous amount of press coverage for the anti-smoking message.
- o The anti-smoking lobby has grown strong in the past decade. A number of anti-smoking and nonsmokers rights groups, like the Coalition on Smoking Or Health, the Advocacy Institute, and Action on Smoking and Health (ASH), have devoted a great amount of time and resources to promoting the anti-tobacco message.
- o Print media has been extremely generous in its news coverage devoted to tobacco and anti-tobacco activities and information. One research firm made an intensive effort to estimate the quantity of such news coverage. It was able to collect a total of nearly 71,000 separate news clippings that had appeared in 1988. Of this very large number, more than seventy of every ten contained negative references to tobacco and tobacco products.
- o More than 97 percent of television stations carried anti-smoking public service announcements (PSAs),

according to a 1984 National Association of Broadcasters survey.

- o The same survey reported that more than 80 percent of television stations carried smoking-related news stories, and 62 percent devoted airtime to smoking-related public affairs shows.
- o Between August 1988 and July 1989 PSAs produced by HHS alone were given nearly \$3 million in free airtime.
- o The Department of Health and Human Services spent \$40.6 million in fiscal year 1987 on smoking control programs.
- o In addition, 26 states have smoking education programs totalling nearly \$300 million; California has by far the largest.
- o Companies in the smoking cessation business spent \$14.3 million for advertising in 1988.

As the Advocacy Institute -- a prominent arm of the anti-tobacco lobby -- has noted "the vast outpouring of media attention to smoking" and has commented that, "[b]y

standards which apply to most running stories, coverage of smoking has enjoyed an extraordinary run in the media."

Partly as a result, tobacco use in this country has decreased, down from 40 percent in 1965 to 29 percent, according to the Surgeon General's 1989 report. Between 1965 and 1985, some 41 million people gave up smoking; nine out of ten without outside help.

Consumption has decreased. Awareness levels are extraordinary. An independent opinion poll showed that 99 percent of the American public has heard the arguments against cigarette smoking.

A 1985 survey done by HHS showed not only had the American public heard that cigarette smoking posed a health threat, but 95 percent believed that cigarette smoking increased the risk of lung cancer; 92 percent believed it increased the risk of emphysema; and 91 percent believed it increased the risk of heart disease.

Additionally, it is important to note that tobacco advertising is not designed to create new smokers, but to encourage brand loyalty and brand switching. A study of tobacco advertising bans and consumption rates in 16

countries indicates that tobacco advertising has no real effect on total consumption. In fact, the study revealed that advertising bans have not been followed by significant changes in tobacco consumption.

In short, reliable data indicate that Americans who smoke do so out of informed choice, not lack of information on the alleged risks of smoking. Therefore, a \$50 million investment in counter-advertising is not a wise use of taxpayer dollars.

TIMN 298963

Opening Statement - S. 1883

Model States Program

The health of our nation's young people is of the utmost importance. I'm certain we all concur that smoking is an adult activity, a choice to be made when one is responsible enough to consider all the facts and arguments.

The clear intention of S.1883 is to legislate a reduction in the number of young people who smoke, and try to prevent others from starting. An important goal, but one not achievable by these means.

Supporters of this legislation argue that part of the answer is to prohibit the sale of tobacco products to youngsters, and to properly enforce such laws. There's near-universal agreement on this; 44 states have already enacted laws to do just that.

But there is a serious question whether the government needs to spend \$50 million a year on additional incentive grants, the so-called "model state program," to educate retailers on the specifics of the law and the mechanism of its enforcement, and to prompt states to pass or toughen-up legislation to prohibit sales to youngsters.

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This bill overlooks the non-government programs for retailer awareness that are already underway. The tobacco industry has recognized the need to ensure that tobacco retailers are fully aware of state laws and the consequences they face if they fail to comply. The latest industry effort will commence next month. The industry has undertaken a new, voluntary outreach program to retailers nationwide. This program will be implemented by state and national organizations representing retailers, including grocers, convenience stores, truck stop and petroleum marketers, tobacco and candy retailers.

The program includes brochures outlining the applicable minors law, a tip sheet on how to spot fake ID's, signs for the door to let customers know immediately that the store does not sell tobacco to those not of legal age, and point-of-purchase display signs to remind customers and store employees of the law. This program will assist retailers in preventing the sale of cigarettes to persons below the minimum legal age.

In this time of budget constraints, it is not necessary or prudent for the federal government to

allocate \$50 million a year when serious, voluntary industry efforts are already underway.

I'm concerned, as well, that in the area of enforcement, things are starting to get out of hand. I'm referring to "sting" operations organized by anti-smoking groups who seek publicity by trapping store clerks selling cigarettes to youngsters.

Three sting operations were organized with a maximum of press attention last year by the Association for NonSmokers in Minnesota, one with police participation. While no one argues the need to strengthen law enforcement, do we want to spend \$50 million a year to prosecute a store clerk-- as is happening to a young mother of four--or should that money go after schoolyard drug-dealers who push our kids to smoke crack?

A Minnesota columnist sized it up when he wrote..."Why involve cops in what was essentially a publicity stunt."

This expensive "model states" incentive grant program also encourages states to outlaw the sale of tobacco products in vending machines in situations where minors have potential access to them. According to a

survey for the National Automatic Merchandising Association, only 16 percent said they bought cigarettes from vending machines. Clearly this vague, "broadstroke" provision is unnecessary because vending machines are not a primary source of cigarettes for minors.

We know through exhaustive research that the primary reasons young people smoke are parental influence and peer pressure. It's ironic that very little, if anything, in this bill addresses effective ways to deal with peer pressure. But it's because of the peer pressure factor, that the tobacco industry launched a major program teaching kids to act more responsibly and resist those influences.

Youth smoking is indeed a problem, but passing this legislation is not the answer and, in fact, obscures the most reasonable solutions. There are many successful government and private industry programs already in place and working right now to discourage teenagers from smoking, including an extensive new educational program for retailers who sell cigarettes. Let's let those initiatives do their job, and let's do ours by focusing our increasingly limited federal dollars on our country's other pressing needs.

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Opening Statement - S. 1883
Anti-smoking Programs in Schools

Here in the nation's capital, three different people were shot in a 90 minute period ten blocks from the Capital grounds.

Neighborhood children interviewed by television reporters were completely unmoved, found the shootings commonplace, and stated that nothing is going to stop the violence. (Channel 9, 11 o'clock news, 1/31/90)

In an effort to tackle the illegal drug problem in schools, Congress enacted the Drug-Free Schools and Communities Act in 1986, and the Anti Drug-Abuse Act in 1988.

S. 1883 takes cigarettes and lumps them into the Anti-Drug Abuse Act and the Drug-Free Schools Act. Are illegal drugs under control? Are our schools and communities drug free? Can these fledgling programs, with huge crises to tackle, stand to be diluted with the addition of tobacco products?

These programs aren't working yet. There's no decline in drug sales or use or violence -- in fact the

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problems may be increasing. Can we afford to confuse the issue?

Some of our children's lives are so bleak and so rife with immediate physical danger that when three different people are gunned down on their street in an hour and a half, they find it just another day. They think it's normal to be shot dead at the age of 18 in the United States. They think it's normal that men and boys shoot each other ten blocks from the U.S. Capitol.

Instead of stopping the bullets that are killing now, S. 1883 offers them more warning about smoking, just in case they survive adolescence. Instead of helping to apprehend those who sell drugs to our kids, S. 1883 encourages states to arrest those who sell them cigarettes. Instead of educating children so they will have alternatives to the streets, so they will have real opportunities, its's going to spend \$185 million taxpayer dollars repeating the message not to smoke cigarettes.

The criminal justice system in our states is already overburdened. There aren't enough jails. There aren't enough judges to hear all the cases. There aren't enough prosecutors to try all the cases. And, there certainly aren't enough police officers to safeguard our streets.

Yet, S. 1883 will use our scarce judicial resources, overcrowded jails, and limited police forces, to put away convenience store clerks who sell cigarettes.

We have programs to curb tobacco use -- in the schools, in the states, and in the federal government. But, we are not doing enough about illegal, mind-altering drugs. We are not doing enough for these children.

Issue Brief - S. 1883

Anti-smoking Programs in Schools

The negative effects of S. 1883 -- diluting the war on illegal drugs -- will far outweigh any impact of tobacco usage. S. 1883 ignores the most pressing needs of those it purports to protect. And, it ignores the crisis of the American educational system.

S. 1883 would amend the Drug-Free Schools and Communities Act of 1986 and the Anti Drug Abuse Act of 1988 to cover tobacco products and provides incentive grants to establish smokefree schools.

Lumping tobacco into the category of illegal drugs only serves to confuse the issue. A smokefree school is no haven from drugs. We are losing ground against the drug cartels. All efforts should be made to strengthen our drug war efforts -- not to weaken and confuse them.

This undermines the war on drugs by confusing the issues. A convenience store clerk is not a drug lord. A grocery store does not use automatic machine guns to protect its cigarette sales territory. Lumping cigarettes into the category of illegal drugs does nothing to help our children distinguish between our priorities.

American schools need attention, but our primary emphasis shouldn't be on making them "smoke-free." Instead, let us look to increasing our children's educational levels.

In international mathematics and science, American students scored worse than South Korea, Ireland, Spain, the United Kingdom, Japan, West Germany, France and Canada. (Education Week, 2/8/89, CRS Review, 10/88) In another 16 country study, the U.S. spent less per student than all but two countries on K - 12 education. (Economic Policy Institute)

Our schools, and the nation's educational system and goals, need help and additional funding. But, by putting this emphasis on "tobacco-free" schools, we do nothing to solve the real problems. We need to assure that adequate learning programs are in place so that our country's youth can compete with other countries. We need to assure that drug dealers are not in the playgrounds. Making our schools "smoke free" misses this mark.

TIMN 298974

Opening Statement - S. 1883

Ingredients/Additives

Mr. Chairman, I would like to make a brief statement in connection with a particular feature of the Kennedy bill that troubles me and that I believe is unjustified. The bill would require blanket disclosure of tobacco additives, including brand specific additives, through labels or package inserts. This requirement is inconsistent with current law and would compel disclosure of valuable trade secret information. Complete ingredient disclosure of this kind is not currently required for food, drugs or any similar consumer product.

Under the Comprehensive Smoking Education Act, enacted in 1984, cigarette manufacturers are required to provide the Secretary of Health and Human Services on an annual basis "a list of the ingredients added to tobacco in the manufacture of cigarettes." Congress considered the disclosure of cigarette ingredient information on this basis to be adequate to permit the federal government to initiate the research necessary to measure the health risk, if any, posed by the addition of ingredients to cigarettes.

In 1984, Congress considered and rejected public disclosure of ingredient information. I believe that was

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a proper decision and remains so today. Cigarette manufacturers, like food processors, use a variety of ingredients to enhance flavor and appearance and preserve shelf life, and these ingredients have long been recognized as trade secrets. For this reason, the 1984 legislation provides trade secret protection to the ingredient information supplied to the Secretary and treats unauthorized disclosure of such information as a crime. I do not believe that anything has changed that would justify the public disclosure of this information and the substantial commercial harm that would result from such disclosure.

The proposed blanket ingredient disclosure requirement for tobacco products goes far beyond the ingredient labeling presently required for food, cosmetics, drugs and other consumer products, and thus would treat tobacco products unfairly. Based on strong trade secret concerns, Congress has explicitly exempted flavorings, colorings and spices from disclosure in food products, and incidental additives and processing aids are also exempt from disclosure. There are similar exemptions for cosmetics, drugs and other consumer products. Most tobacco additives would be exempt from disclosure under these laws.

This bill would treat tobacco products differently in all relevant respects from the way foods, cosmetics and drugs are treated under existing law. I do not believe that this discriminatory treatment is justified. There is a specific tobacco ingredient reporting mechanism under present law, and I am aware of no reason why we should abandon that system, which was carefully designed in 1984. We should not confuse our concern for ingredient safety with a heedless requirement for blanket disclosure of proprietary information.

Issue Brief - S. 1883

Ingredients/Additives

Under S. 1883, cigarette manufacturers would be required to provide to the newly created Center for Tobacco Products Control and Education ("Center") "a complete list of each tobacco additive used in the manufacture of each tobacco product brand name and the quantity of such additive" (Secs. 951(a)(1) and 953). The Center, in turn, would be directed to require public disclosure, through labels or package inserts, of tobacco product additives. Sec. 902(a)(1) and (2).

These provisions are inconsistent with current tobacco ingredient reporting requirements, would threaten public disclosure of trade secret information and would mandate far broader ingredient disclosure than that required for food, drugs or other consumer products. For these reasons, the ingredient disclosure provisions of the bill should be rejected.

Under the Comprehensive Smoking Education Act, enacted in 1984, cigarette manufacturers are required to provide the Secretary of Health and Human Services on an annual basis "a list of the ingredients added to tobacco in the manufacture of cigarettes." 15 U.S.C. § 1335a(a). Congress considered the disclosure of cigarette

ingredient information on this basis to be adequate to permit the federal government to initiate the toxicologic research necessary to measure any health risk posed by the addition of additives and other ingredients to cigarettes during the manufacturing process.

The Secretary, in turn, is directed to transmit to Congress periodic reports summarizing research activities on any health effects of such ingredients and the findings of such research. 15 U.S.C. § 1335a(b)(1). Each year since 1986, the six major cigarette manufacturers have jointly submitted ingredient lists to the Secretary as required by the 1984 legislation. The most recent list was submitted just this past December. HHS is understood to have under development the first ingredients report mandated by the 1984 legislation. There is no reason to abandon the existing review mechanism or to conclude that it is inadequate.

Because information concerning the ingredients used to manufacture particular cigarette brands is so competitively sensitive, Congress provided in the Comprehensive Smoking Education Act that the ingredient information supplied to the Secretary "shall be treated as trade secret or confidential information." Such information is exempt from disclosure under the Freedom

on Information Act and criminal penalties are established for the unauthorized disclosure of such information. 15 U.S.C. § 1335a(b)(2)(A).

In 1984, Congress considered and rejected public disclosure of tobacco ingredient information. Tobacco industry witnesses explained that cigarette manufacturers use a variety of ingredients to enhance flavor and appearance and preserve shelf life, and these ingredients have long been recognized as trade secrets.¹ Congress responded by providing trade secret protection to the ingredient information submitted to HHS. The reasons for protecting against public disclosure of tobacco ingredient information remain equally compelling today.

The proposed blanket disclosure of tobacco ingredient data would not only endanger trade secrets, but it is also contrary to the ingredient disclosure requirements for food, drugs and other consumer products. Congress explicitly has exempted flavorings, colorings and spices used in food from label disclosure under Sec. 403 of the FD&C Act, 21 U.S.C. § 343. It requires the FDA, moreover, to establish further exemptions from

¹ *Comprehensive Smoking Prevention Education Act: Hearings on H.R. 5653 and H.R. 4957 before the Subcomm. on Health and the Environment of the House Comm. on Energy and Commerce, 97th Cong., 2d Sess. 355 (1982) (testimony of Edward A. Horrigan, Jr.).*

disclosure for food ingredients "to the extent that [disclosure] is impractical, or results in deception or unfair competition." Ibid. See, e.g., 21 C.F.R. § 101.100 (a)(3)(1989) (exempting "incidental additives," including "processing agents," from disclosure). There are similar ingredient labeling exemptions for cosmetics and drugs.

Most of the ingredients added to tobacco in the manufacture of cigarettes are colorings, flavorings and fragrances, which would be exempt from disclosure under Sec. 403 of the FD&C Act or FDA regulations, or otherwise would qualify for exemption from disclosure on trade secret or impracticality grounds.

There is a specific ingredient reporting mechanism under current law. That system should not be abandoned in favor of one that exposes trade secrets and that mandates broader public disclosure than that required for food, drugs or other consumer products.

TIMN 298982

Issue Brief - S. 1883

Tobacco Industry Initiatives on Youth Smoking

The tobacco industry has long taken the position that smoking is an adult practice -- one to be considered solely by mature, informed persons. For the past 30 years, and in the future, the tobacco industry has maintained responsible positions on the issue of youth smoking and advertising. Few industries in American have taken such direct - and voluntary - action to avoid advertising and marketing aimed at youngsters.

While the first of these industry initiatives can be traced to 1963, when the industry announced termination of brand advertising and promotion in school and college publications and on campuses, the newest in the series of the industry's efforts will commence next month.

Having already recognized the need to ensure that retailers are fully aware of the laws prohibiting the sales of cigarettes to youngsters, and to encourage their compliance, The Tobacco Institute has created a new voluntary outreach program for retailers. It is our hope that this program to work with retailers will assist in the efforts to discourage the sale of tobacco products to youth.

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This new program will begin in Minnesota, Washington and (state to be determined) -- with other states to follow -- in cooperation with appropriate retail associations in each state. The program includes brochures outlining the law in the applicable state, a tip sheet on how to spot fake ID's, storefront door signs to let customers know immediately that the store does not sell tobacco to those not of legal age, and point of purchase display signs to remind customers and store employees of the law.

The breadth of the industry's other voluntary activities, over the course of more than two decades can be seen in the following actions:

- o In 1964, the industry adopted a voluntary code prohibiting advertising and promotion directed at young people. That code also forbid the use of noted sports figures and other celebrities in advertising. It also required that any models in ads must be, and must appear to be, at least 25 years old.
- o In 1969, the tobacco industry offered to voluntarily end commercials on radio and television because of

the media's unique appeal to youngsters. Cigarette ads left the air in early 1971 as a result of Congressional action which formalized our earlier offer.

- o In 1981, reinforcing its own ban on distribution of brand samples to youth, the industry adopted a new code of sampling practices which prohibits distribution within two blocks of youth activity centers, such as playgrounds, schools, campuses and fraternity or sorority houses.
- o In 1982 on the industry's behalf, The Tobacco Institute began a national advertising campaign which reached 110-million Americans. The message was "Do cigarette companies want kids to smoke? No. As a matter of policy, No. As a matter of practice, No. As a matter of fact, No."
- o In 1985, The Institute began offering a free parental guide book, "Helping Youth Decide," prepared in conjunction with the National Association of State Boards of Education. More than 700,000 copies of this guide and its sister publication, "Helping Youth Say No", have been distributed around the country, providing guidance

on family communications to enable parents to help youngsters develop decision-making skills needed to deal wisely with everyday choices and with lifestyle decisions, such as smoking.

- o In 1986, The Institute provided an unrestricted grant to the National Association of State Boards of Education for funding Community Alliance Programs (CAPS) at the rate of ten a year. Towns and cities throughout the U.S. were invited to apply for the grants, which provided the impetus for a broad community-based effort to improve parent-youth interaction.

For the past thirty years -- and for the future -- this industry has maintained responsible positions on the issue of youth smoking. It has always been the policy of cigarette manufacturers that smoking or not smoking is a choice to be made by informed adults. In keeping with that policy, its youth advertising restrictions and parental assistance programs continue.

The results of these, and other efforts are clear. The prevalence of daily smoking among high school students dropped from 29% to 21% between 1976 and 1980 and has fluctuated between 18% and 21% ever since.

TIMN 298987

Opening Statement - S. 1883

"Addiction" Warning Label

The term "addiction" has taken on a new meaning in our society. One constantly hears that someone is "addicted" to food or television or exercise. Even former Surgeon General Koop said that teenagers were "addicted" to video games. (1982 interview)

When we so use a term, it loses its meaning. And, that's what's happening in calling smoking cigarettes an "addiction." To do so ignores the facts.

The Public Health Service says that 41 million Americans have quit smoking. Over 90 percent of those ex-smokers quit without outside help. Unlike heroin or cocaine addicts, those who quit smoking didn't have to check into a substance abuse program. They used will power -- and that's not something an "addicted" person can usually do.

When we talk about the millions who have quit smoking, and that they've done it without help, you can't help but see the enormous difference between quitting smoking and getting "off" drugs. Drug addicts are people in trouble -- they are people who need professional,

frequently in-patient, care. They need our help. Nine out of every ten smokers who gave up tobacco have demonstrated that they don't need the government's help -- they quit on their own.

Let's not confuse the messages we send to the public. Telling our young people that quitting illegal drugs is like giving up smoking sends the wrong message. It tells them that using heroin or cocaine has the same risk of addiction as cigarettes.

We need to be clear in our messages -- and that means not overusing the term "addiction" to include smoking. To do so would contradict the fact that people can and do quit smoking every day. To do so would trivialize the important messages about the dangers of illegal drugs.

Issue Brief - S. 1883
"Addiction" Warning Label

S. 1883 would require an "addiction" warning on cigarette packages and advertisements. This contradicts common sense since 1 of every 2 smokers has quit and trivializes our nation's serious drug problem.

Smoking is truly a matter of personal choice -- one which can be stopped if and when a person decides to do so. The Surgeon General's office indicates that some 41 million Americans have quit smoking. According to the Public Health Service, 90 percent of these people have given up smoking without outside help.

If the mere fact that some people find it difficult to quit smoking is enough to make smoking an "addiction," then any behavior that one engages in on a regular basis may be considered an "addiction." People who have trouble controlling their eating may be considered "addicted" to food, and some may be considered "addicted" to television.

In fact, former Surgeon General C. Everett Koop publicly proclaimed in 1982 that young people are

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"addicted" to video games. Once the term "addiction" is so broadly defined, it loses all meaning.

Others rely on a comparison to heroin and cocaine to support the claim that smoking is an "addiction." If the difficulty of stopping the use of heroin or cocaine is the measure of an "addiction" -- a step usually requiring hospitalization and outpatient treatment and the wholesale restructuring of the former addict's lifestyle -- then the comparison of nicotine to Issue such hard drugs is clearly absurd. If the effect of heroin or cocaine use on the user is the measure of an "addictive" substance -- impairing the individual's ability to think clearly and otherwise to lead a normal everyday life -- then, by this standard as well, nicotine clearly cannot be considered "addictive."

To call cigarette smoking an "addiction" trivializes the serious narcotic and other hard drug problem faced by our society and undermines efforts to combat drug abuse. The message to the American public is that using illegal drugs, such as crack or heroin, has the same risk of addiction as smoking.

The message to the American public is that those who smoke -- our neighbors, family, co-workers -- are the

same as those who use mind-altering, illegal drugs. This message sends the wrong signal about smokers and about the serious nature of the illegal drug problem. As The Boston Globe noted "[s]moking bears no resemblance to drug abuse or alcohol abuse. Smoking does not affect mental acuity, nor temporarily derange a person, nor produce so much as a lull in anyone's contact with reality."

The Indianapolis Star warned:

"Classifying the dangers of nicotine with the horrors of heroin or cocaine is misguided zealotry. It downgrades, even discredits, the nation's campaign against hard drugs. *** [T]he Surgeon General's latest attack on smoking is itself generally irresponsible. His enthusiasm has turned to zealotry and is on its way to fanaticism."

When the claim that cigarettes are "addicting" was made in the 1988 Surgeon General's report, a critical response from public health and other figures was instantaneous. For example, Professor Albert Hirsch, author of the foreword and conclusion to an extensive 1987 report on tobacco to the French Ministry of Health and a vocal critic of the tobacco industry, condemned the Surgeon General's conclusions in an interview on French radio:

"Tobacco cannot be compared to drugs, especially hard drugs like heroin or other narcotics. It is always bad to fight an evil with misstatements or distortions of the truth. *** Talk of 'addiction' would mean comparing tobacco to something which completely alters

the personality of the subjects, turning them into anti-social individuals, which we know is not the case with the overwhelming majority of smokers. We should resist the kind of discrimination and witch-hunt that can be observed in some of the excesses of the antitobacco campaign in the United States."

By branding cigarette smoking an "addiction," one "brands" smokers, and does so without substantial medical or scientific justification. The effort to so disparage cigarette smoking can only detract from our society's attempt to meet its serious drug problem.

TIMN 298994

Issue Brief - S. 1883
Federal Preemption of Advertising
and Promotion

The Case Against Censorship

Censorship is habit-forming...It is at the heart
of the First Amendment that we do not lightly
strike out at speech to deal with social problems

--Floyd Abrams

S. 1883 is the back door route to a ban on cigarette advertising and promotion. The mechanism is Section 955, which would disable the existing federal preemption of state and local regulation ... scrap a carefully crafted policy of national uniformity ... and encourage a proliferation of state and local laws that would make it difficult, if not impossible, for tobacco companies to exercise their right to free commercial speech under the first amendment.

With enactment of the Federal Cigarette Labeling and Advertising Act in 1965 and in subsequent legislation enacted in 1969 and 1984, Congress recognized the need to avoid a tangle of diverse and confusing labeling and advertising regulations.

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The evidence fails to support the premise that further regulation of tobacco advertising would reduce tobacco smoking.

- o "There is no scientifically rigorous study available to the public that provides a definitive answer to the basic question of whether advertising and promotion increase the level of tobacco consumption." (Surgeon General's 1989 Report.)
- o "There is little evidence that advertising results in additional smoking. As with many products, advertising mainly shifts consumers among brands. Evidence from other countries suggests that banning tobacco advertising has not discouraged smoking." (Council of Economic Advisors' 1987 Report to the President.)
- o "No one pretends that advertising is a major determinant of smoking in this country or any other." (Michael Pertschuck, former chairman of the Federal Trade Commission and a leading anti-smoking advocate.)

Clearly, the current national policy of informed individual choice is working, as the following facts demonstrate:

Since 1965 --

- o Tobacco use has declined dramatically. The prevalence of smoking by adults has dropped from 40 per cent to 29 per cent. (Source: 1989 Surgeon General's Report.)
- o Between 1965 and 1985 some 41 million people have given up smoking; nine out of ten did it alone, without outside intervention. (Source: 1988 Surgeon General's Report.)
- o In 1985, the group of ex-smokers outnumbered people who smoked more than 25 cigarettes a day by a three-to-one margin. (Source: 1988 U.S. Statistical Abstract.)

Common sense argues against passing a law that unwisely erodes freedom of speech in the name of controlling lifestyle behavior. The proposed legislation ignores the substantial constitutional concerns involved in mandating compliance with a needless patchwork of conflicting state and local advertising regulations.

S. 1883 IS A PRESCRIPTION FOR PROHIBITION. TODAY'S TARGET MAY BE THE TOBACCO INDUSTRY. BUT IF CONGRESS OPENS THE DOOR TO A FLOOD OF LOCAL AND STATE ADVERTISING RESTRICTIONS ... THE OBVIOUS QUESTION IS -- WHO'S NEXT?

IF FEDERAL ADVERTISING POLICY ISN'T BROKEN, DON'T FIX IT.

TIMN 298998

Opening Statement - S. 1883
Targeted Anti-smoking Campaigns

S. 1883 claims that the least educated Americans are twice as likely to smoke than the most educated. What it doesn't say is that the least educated also earn only a fraction (56 percent) of what the college educated earn.

Almost a fourth of all high school dropouts live below the poverty level. And, what's worse, close to half of their children will live in poverty.

It's noteworthy that the least educated are also more likely to receive public aid, to commit crimes and to contribute less in revenues toward the support of their community and country.

When nine out of ten Americans with college degrees work or are looking for work, only six out of ten high school dropouts work or look for work.

Spend money on education and you directly address the problems of the least educated. Spend the money of S. 1883 -- some \$185 million, more than a third of the increase in the Administration's education budget, on tobacco education and you do nothing to break the cycle

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of poverty -- with no guarantee you'll see a further decrease in youth smoking.

Since 1965, 41 million smokers have quit, the vast majority without assistance. Obviously, the current programs are working. At the same time, we've gotten the news that the antismoking campaign is succeeding, we have learned that we need more education -- and a better war on drugs.

The \$50 million allocated in this bill for targeted grants could provide another 1,600 teachers to improve our children's math and science skills, or 1,000 federal prison beds for drug offenders that go free because our prisons can't hold them. Those are the real needs, the pressing needs.

Issue Brief - S. 1883

Targeted Anti-smoking Campaigns

S. 1883 directs a Center for Tobacco Products to make grants to public and private organizations to conduct antismoking campaigns directed at minors and "those in the groups of highest tobacco use." Target audiences include youth, school dropouts, minorities, blue collar workers and low and no income individuals and others.

The bill costs \$185 million, more than a third of the increase for education budgeted by the Administration.

Any funds spent on tobacco programs for youth, school dropouts, low and no income individuals and others are funds that could be spent addressing the overall needs of these groups. According to the bill, the more educated an individual, the less likely he or she is to smoke. It is a far better use of funds to spend \$185 million educating our least educated, instead of \$185 million on more anti-tobacco programs. More education improves their prospects across-the-board, not just on smoking rates. American education is in decline; existing anti-smoking efforts are succeeding.

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Spend money on education -- to help break the poverty cycle and give our nation's least educated a better chance. Now, the picture is grim. Almost one-fourth of all high school dropouts live below the poverty level. The least educated are more likely to receive public assistance, to commit crimes and to contribute less in taxes.

Nine out of ten Americans with college degrees work or are looking to work -- compared to six out of ten high school dropouts.

Since 1965, 41 million smokers have quit, the vast majority without assistance. Obviously, the current programs are working.

At the same time, we've gotten the news that the antismoking campaign is succeeding, we have learned that we need more education -- and a better war on drugs.

The \$50 million allocated in this bill for targeted grants could provide another 1,600 teachers to improve our children's math and science skills, or 1,000 federal prison beds for drug offenders that go free because our prisons can't hold them. Those are the real needs, the pressing needs.

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TIMN 299003

TIMN 299004

Model State Grant Program

For "friendly" or TI witness:

Question 1:

The tobacco industry has publicly asserted its support for measures to prevent kids from smoking, but where's the evidence of that commitment? Are these programs really being advanced by industry, or is it just lip service, as some people charge?

Answer:

Given the millions of dollars and great effort put into our anti-smoking programs for youth, that would be a pretty inefficient way to give lip-service. In fact, the industry's programs already are nationwide in scope, and the new retailer program will broaden our efforts substantially.

The tobacco industry's position is that young people should not smoke, period. Smoking is an adult choice. The Tobacco Institute, in cooperation with the National Association of State Boards of Education, created a program called "Helping Youth Decide," which helps kids make responsible decisions by improving communication between them and their parents. That program has been

Model State Grant Program

For "friendly" or TI witness:

used in schools and communities around the country, with very positive response.

The new retailers' program will help ensure the best efforts of retailers in complying with minimum age laws and keeping tobacco out of the hands of youngsters. The voluntary programs already under way should satisfy the needs that are perceived in this area.

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TIMN 299006

Model State Grant Program

For "friendly" or TI witness:

Question 2:

But this program doesn't do anything to stop the sale of cigarettes to minors through vending machines.

Answer:

First of all, independent research shows most teenagers who smoke rarely buy their cigarettes from vending machines for a variety of reasons. It just isn't a big part of the youth smoking problem. However, because we know this is a concern, the education program created by The Tobacco Institute also is directed toward the vending machine owners and distributors. The information kits will be distributed to these people, and will include signs and other literature that make it clear anyone under age is not allowed to buy cigarettes, through any means.

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TIMN 299007

National Counter-Advertising Campaign

For "friendly" witness:

Question 1:

The tobacco industry argues that its advertising is not intended to create more smokers, but to encourage brand-switching. Why would so much money be spent simply to get people to switch brands?

Answer:

The stakes are high, and the cigarette market in the United States is fiercely competitive. Based on 1988 figures, a one-point market is worth \$558 million. In such a setting, competing brands often cancel each other out. Because of the general ineffectiveness of the advertising media and the cost of competition, the various cigarette manufacturers collectively spend a great deal of money both vying for the attention of switchers and solidify brand loyalty for its customers.

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TIMN 299008

National Counter-Advertising Campaign

For "friendly" witness:

Question 2:

Given all of the money spent by the tobacco industry on advertising, isn't there some argument to be made for the balancing effect of \$50 million toward a counter-advertising effort to convince people to stop smoking?

Answer:

First, we shouldn't ignore the millions of dollars in advertising time spent on anti tobacco messages. A great deal of that is free advertising in the form of public service announcements -- and that's something the tobacco industry certainly doesn't get. In addition, each and every cigarette ad contains an anti-smoking warning.

Research shows that the anti-tobacco advertising has had an effect; awareness levels of anti-tobacco arguments are nearly universal in this country, and the number of people who smoke has decreased dramatically. So to spend even more money, in a time of tight budgets, on further efforts to counter tobacco industry advertising that has virtually no effect on overall consumption anyway seems

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TIMN 299009

National Counter-Advertising Campaign

For "friendly" witness:

foolish. Granted, some people still smoke. But they do so out of choice, not because they haven't heard the anti-tobacco line. No increase in counter-advertising is going to change that.

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TIMN 299010

National Counter-Advertising Campaign

For "friendly" witness:

Question 3:

You claim that awareness levels of the anti-smoking arguments are high. But isn't that just for the adult population? Isn't it necessary to counter-advertise for the sake of our children's health?

Answer:

We do need to make sure our children are as educated as adults. That way, they can make more informed decisions when they become adults. And today's young people have been educated. The same anti-tobacco advertising campaign that's been going on since the first Surgeon General's report has reached kids and adults alike. Kids watch television, they see the public service announcements. Millions are aware of the annual Great American Smokeouts. They also are reached by education programs in the schools, like the Helping Youth Decide program.

In fact, the overwhelming majority of youngsters are aware of laws restricting the sale of cigarettes on an age basis.

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TIMN 299011

National Counter-Advertising Campaign

For "friendly" witness:

Research has shown that advertising has virgually no effect on decisions by youngsters to smoke. Rather, the overwhelming influences are parental example and peer pressures.

Research has also shown that the only impact of cigarette advertising is a vehicle of competition among brands. Brand advertising does not increase aggregate demand.

Young people do not start smoking solely as a result of an advertising campaign. They start smoking because of peer pressure or because their parents smoke. So it would still be wasteful to appropriate this much money toward an anti-tobacco campaign.

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TIMN 299012

TIMN 299013

Model State Grant Program

For "hostile" witness:

Question 1:

It seems to me we've lost some sight of national and state priorities here. Most states have already adopted laws banning tobacco sales to minors. Dozens of other state programs are badly in need of financing, from drug enforcement and treatment to infrastructure needs, and I haven't gotten any calls from state legislators begging for federal money for tobacco enforcement. If we've got \$50 million to dole out, why throw it at this?

Question 2:

I'm concerned about the intergovernmental issues involved here. Why shouldn't the states pay for enforcing their own laws prohibiting sales to minors? And aren't we raising some federalism problems by putting strings on this money and twisting the states' arms?

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TIMN 299014

National Counter-Advertising Campaign

For "hostile" witness:

Question 1:

Surveys show that 99 percent of Americans are aware of the claims about health risks of smoking. What evidence is there that a \$50 million counter-advertising campaign is necessary or useful, especially in light of the tremendous coverage given by the media to the anti-smoking movement?

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TIMN 299015

For "hostile" witnesses:

RE: Targeted Advertising

1. For years, targeted marketing has been an accepted method of conveying a message to certain target groups. Consumer product manufacturers especially, like McDonalds and Proctor and Gamble, have practiced targeted marketing for their brands. Even the federal government does it. So how does this differ from targeting certain brands of tobacco products?

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TIMN 299016

For "hostile" witnesses:

RE: Senator Tom Harkins' "Health Objective 2000 Act"

1. Senator Tom Harkin (D-IA) and others have introduced legislation that would give state public health agencies \$300 million for block grants in 21 specific areas, which includes tobacco use, nutrition, accidental injuries, environmental hazards, AIDS and other sexually-transmitted diseases, splitting \$300 million 21 ways. With public health officials vying for our attention to so many other health-related areas, how can you justify spending \$50 million solely on an anti-tobacco education program?

2. If we pass Kennedy's legislation, aren't we letting special interest groups become the judges of our health priorities?

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TIMN 299017

For "hostile" witnesses:

RE: 1988 Surgeon General's Report on Nicotine Addiction

1. The 1988 Surgeon General's report states that nicotine, which is found in cigarettes and other tobacco products, is addictive. Yet the 1989 Surgeon General's report stated that the smoking rate has dropped from 40 percent to 29 percent. How did so many people quit smoking if it is so addicting?

2. Illegal drug use is commonly linked to crime. But smokers are not killers, gunning people down in the street, like a number of those on crack and other illegal substances. How can you compare lighting up a cigarette with lighting up a crack pipe?

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TIMN 299018

Question (Dr. Sullivan)

1. This legislation calls for counter-advertising programs to be undertaken by the government at a cost of \$50 million dollars a year, including paid advertising.

Could you tell me how much HHS has budgeted in the FY 1991 for health promotion and disease prevention programs devoted to informing and educating the public about the dangers of smoking and the advisability of quitting or never starting?

(Follow up)

2. And do I understand correctly that you believe the level of spending on antismoking activities that your department has budgeted is not enough?

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TIMN 299019

Question (State Health Official)

1. Doctor, I understand that you favor this legislation. But I'd like to find out the kind of legislation you would want to see Congress enact if you had total power to dictate federal law. We have the state grant approach, the advertising restriction approach and public information and education approach. But isn't it time for stronger medicine, Doctor.

2. Several communities in your state have banned cigarette vending machines. If prohibition comes to pass in the United States, is it likely to start in Minnesota? What's your prescription for tobacco and smoking, Doctor?

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TIMN 299020

Question (Coalition on Smoking or Health)

1. This bill [section 901(a)(5)] provides federal funds for states to enforce state laws prohibiting the sale of tobacco products to minors. Why isn't this a matter best left to the States?

2. Finally, let me ask if think retail-level "sting" operations are a good use of law enforcement and court resources in cities like Miami, Los Angeles, Boston, Newark, Boston or the District of Columbia?

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TIMN 299021

Question (Coalition on Smoking or Health)

1. We all know that smoking is dangerous to our health, that folks who smoke should quit and that kids who don't smoke should never start. But I read about a study in the Washington newspapers last Friday that gave me pause. It reported the findings of a 13-year survey of black and white adults by the Centers for Disease Control.

It was headlined this way: "Poverty Major Cause of High Black Death Rate." It went on to say that income differences between black and white were more significant determiners of mortality than smoking, drinking, cholesterol level, overweight, diabetes, or high blood pressure.

Do you think your exclusive emphasis on smoking diverts attention from government action that might cut down the income gap between black and whites?

Source: Washington Post, 2/9/90, p.A-1

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TIMN 299022

Poverty Major Cause of High Black Death Rate

By Malcolm Gladwell
Washington Post Staff Writer

The high rate of premature deaths among black Americans—2½ times greater than among whites in some age groups—is the result of so many different causes that even if high-quality health care were equally available to both races and incomes were equal, a significant portion of the gap would remain, according to a study published today.

In a 13-year survey of 8,806 black and white adults, researchers at the federal Centers for Disease Control in Atlanta found that just under one-third of the difference in death rates between the races can be attributed to the higher incidence of well-known and preventable risk factors such as high blood pressure, cholesterol level, weight, smoking, alcohol and diabetes.

In other words, if blacks and whites were equal in these six critical indicators of health, the study found, 69 percent of the difference in the mortality rate would remain.

According to the study, differences in income accounted for 38 of those 69 percentage points. That is, if black and white samples were chosen to have equal incomes, that one factor would erase 38 points of the mortality difference.

Poverty, which afflicts blacks disproportionately, is known to limit access to health care and, the researchers noted, may contribute to disease by imposing greater stress.

A final 31 percent of the mortality difference could not be attributed to any known or measurable cause. Among such factors are presumed to be differences in environment, life style, access to care and perhaps heredity.

The study, which was published in the *Journal of the American Medical Association*, appears to complicate the perplexing question of why the health of black Americans appears to be steadily deteriorating relative to whites. For example, in 1986—the last year for which fig-

ures are available—black life expectancy declined for the second year in a row, falling to 69.4 years, 5.4 years less than the average white life expectancy.

By giving broad weight to economic factors—which it says account for 38 percent of the difference in black and white death rates—and other unknown considerations, the study appears to suggest that only part of the solution to the mortality gap may lie within the power of the medical community.

"Broader social and health system changes and research targeted at the causes of the mortality gap, coupled with increased efforts aimed at modifiable risk factors, may all be needed for egalitarian goals in health to be realized," the study said.

The study compared the health profiles and histories of 7,573 whites and 1,233 blacks taken from health surveys conducted from 1971 to 1975 and again from 1982 through 1984.

According to the data, blacks between the ages of 35 and 54 had a mortality rate 2.3 times higher than whites in the same age bracket. Blacks between 55 and 77 years of age were 1.1 times more likely to die than their white counterparts.

Using a statistical method known as a regression analysis, the researchers computed how much of that higher rate could be explained by each of a variety of risk factors identified in the health profiles.

For example, if a group of black smokers has a higher percentage of deaths than a group of white smokers, the researchers could conclude

that smoking only partially explained the differing mortality rates.

All told, the study found that the six major indices of personal health, whether the subject smokes, drinks, is overweight, has diabetes or suffers from high cholesterol or high blood pressure, explained only about a third of the mortality difference.

Income differences were more significant, accounting for well over a third of the difference. This, the study stated, was a reflection of the

extent to which access to health care, diet and personal habits, such as smoking, are strongly correlated to socioeconomic status.

The CDC report adds to the puzzle

created by previous studies, which demonstrated that for some unknown reason, even when the effect of income has been accounted for, blacks tend to use the health care system less and, when they do, to achieve poorer quality results than whites.

"It is not simply an issue of income," said Linda Aiken, a professor of sociology and nursing at the University of Pennsylvania.

"There is something about being black that is important above and beyond being poor, that results in lower use of medical services. Whether that reflects discrimination in the system or lack of understanding of how to use it, we don't know," Aiken said.

TIMN 299023

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Question (State Health Official)

1. Under one provision of this bill, the Secretary of Education is directed to provide incentive grants to establish "smokefree" schools. This would be in addition to "drugfree" schools.

Tell me, Doctor, which has the greater priority -- making schools smokefree or drugfree? How does it work in Minnesota, especially in urban elementary schools? And who takes the lead, the educators or the public health officers?

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TIMN 299024

Question (Coalition on Smoking or Health)

1. The bill could be used by a state to justify a total ban on certain types of advertising or certain means of advertising tobacco products in that state. Are you comfortable with letting a state get into interpretations of commercial free speech?

2. It also appears that a state could use Section 955 to justify creating its own warnings to be used in that state. Again, is this something you accept: that is state intervention in advertising legal products sold across the country? Potential state restrictions on interstate commerce?

3. Chapter 1 of Subtitle B (Sections 911-913) provides grants to public and private entities for public service announcements, paid advertisements, and "counter advertising". What private entities will receive funds under this provision? Are these groups your supporters, part of your membership base?

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TIMN 299025

Questions for Health Official:

1. The drug war in America continues to escalate. Kids who use crack and cocaine will do anything to get more--kill, steal, lie, you name it. Nothing seems to stop them. Some health officials link smoking with illegal drug use, but people who smoke don't go around shooting people. How can you justify equating cigarette smoking to smoking crack?

2. And what kind of message is this for our children? Aren't we confusing our kids and trivializing the issue of drug use if we tell them that using cocaine and heroin is the same as smoking tobacco?

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TIMN 299026

Questions for Health Official:

3. This legislation would appropriate \$185 million for anti-tobacco youth education programs and counter-advertising, while there's not enough money to teach our kids the dangers of hard drugs. Wouldn't this money be better spent on putting away the drug dealers?

4. When the federal government already spends millions on smoking control programs through the Department of Health and Human Services, why do we need another layer of bureaucracy that will cost the taxpayers \$50 million? By the way, how much does your state spend for tobacco control, regulation, education and for information?

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TIMN 299027

**Questions for Coalition on Smoking OR Health
representatives:**

1. You claim that tobacco products need more government regulation. But when you consider the regulations already facing the tobacco industry -- state and federal excise taxes, advertising restrictions, youth smoking restrictions -- what purpose would more regulation serve? And wouldn't the money be better spent elsewhere?

2. More than 90 percent of Americans have heard and believe that smoking is dangerous to your health. The evidence that they have received this message is in the millions of people who have quit smoking. However, some people will always continue to smoke. Why should we spend \$50 million in a time of scarce resources on additional anti-smoking education programs and advertising? Do you really think more people will be moved to quit smoking through more anti-smoking information?

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TIMN 299028